

**EU Energy Policy and National Gas Markets.**

The role of French and German governments and gas industries at the European, national and regional levels.

Alexander Penna  
Department of Political Science  
University of Oslo  
Fall 2004

## **Preface**

In the course of this thesis prepared for the Political Science Department at the University of Oslo I have had the pleasure of becoming acquainted with many lovely people.

I would like to extend warm professional thanks to all of my confidential interviewees in Brussels, Paris and Germany. A special thanks to Johan Vetlesen, my initial key informant at the Mission of Norway to the EU in Brussels.

I would also like to thank my thesis advisors, Svein Andersen of the Norwegian School of Management and Tom Christensen of the Political Science Department at the University of Oslo for their efforts and constructive comments.

With this thesis I express gratitude to the Fulbright Association and to my academic friends in Boston.

Many pleasant things have happened in my life since I arrived in Norway in late June 2000. I would like to thank many other people in person.

Alexander Penna  
Oslo, Norway.  
November 2, 2004.

## **Table of contents**

### **Page**

Abbreviations 5

Notice 6

### Chapter 1 Introduction

1.1 Introduction 7

1.2 Background 8

1.3 Choice of Case 9

1.4 Multi-level Governance 12

1.5 Macro-Economic Models 13

1.6 Further Contents 18

### Chapter 2 Theoretical Basis

2.1 Introduction to the Political Economy Framework 20

2.2 Choices in sector dynamics 22

2.3 Theoretical Implications 26

2.4 Choice of Theory 26

2.5 Defining Institutions 28

2.6 New Institutional Economics 30

2.7 Conclusion 42

### Chapter 3 Analytical Basis

3.1 Introduction 43

3.2 Methodological Considerations 43

3.3 The Multi-Level Governance Approach 48

3.4 Terms, Variables and Hypotheses 53

3.5 Operationalization of Variables 56

3.6 Conclusion 57

### Chapter 4 Supranational Level

4.1 Introduction 58

4.2 Framework 59

4.3 Background 60

4.4 European Union 63

4.5 German Delegation 69

4.6 German Gas Industry 73

4.7 French Delegation 77

4.8 French Gas Market 81

4.9 Regions 83

4.10 Interest Groups 84

4.11 Analysis of Independent Variables 85

4.12 Summary 86

## Chapter 5 National Level

5.1 Presentation 88

5.2 Introduction 89

5.3 France 90

5.4 Germany 100

5.5 Analysis of Independent Variables 109

5.6 Summary 110

## Chapter 6 Subnational Level

6.1 Introduction 111

6.2 Overview 111

6.3 France 112

6.4 Germany 116

6.5 Analysis 119

6.6 Conclusion 120

## Chapter 7 Summary and General Conclusions

7.1 Introduction 121

7.2 Presentation of Analysis and Results 121

7.3 Multi-Level Governance 123

7.4 New Institutional Economic Theory 124

7.5 Conclusion 125

Bibliography 126

## **Abbreviations**

BDI. Bundesverband der deutschen Industrie. E. V.

BMWA. Bundesministerium für Wirtschaft und Arbeit.

BNP. Banque National de Paris.

BGW. Bundesverband der Gas- und Wasserwirtschaft.

CFM. Compagnie française du Méthane.

CGT. Confédération Générale du Travail.

CRE. Commission de regulation de l'énergie.

GTE. Gas Transmission Europe.

DG COMP. The Directorate-General for Competition of the European Union.

DG TREN. The Directorate-General for Energy and Transport of the European Commission.

ECJ. European Court of Justice.

EDF. Électricité de France.

EP. European Parliament.

EU. European Union.

GDF. Gaz de France.

GSO. Gaz Sud Ouest.

MLG. Multi-Level Governance.

NIE. New Institutional Economics.

TPA. Third Party Access.

VIK. Verband der Industriellen Energie- und Kraftwirtschaft.

VKU. Verband kommunaler Unternehmen e.V.

VV. Verbändevereinbarung

**Notice**

All dates are presented in European numerical form: Date.Month.Year.

## Chapter One Introduction

### 1.1 Introduction

This study is founded on theoretical and conceptual models of institutional change. I attempt to chart the institutional changes placed on the French and German gas markets as a result of the European Union's liberalization policies in the gas market in the period 1998-2003. I ask how the current market structures diverge from the simplified institutional arrangements of corporatism in Germany and state-dirigisme in France. My theoretical framework rests on New Institutional Economic Theory and I employ its main concepts in identifying my dependent variables. My methods of analysis are based on the multi-level governance perspective, which allow me to chart institutional dynamics at the supranational, national and subnational levels.

This study's central research question asks:

*What transformations have occurred to the institutional structures between the gas industry and governments of the French and German gas sectors as a result of the European Union's liberalization of the energy market in the period 1998-2003?*

In answering the study's central research question, I attempt to address two subquestions:

- 1. Do the relationships between governmental and gas industry still function as corporatism in Germany and state-dirigisme in France? If not, how can the new functioning relationships be described?*
- 2. Do the transformations characterize complete unified changes in France and Germany? Or has the Europeanization of gas policy decomposed the nation-state so that differing transformations have occurred at the European, national and regional levels?*

I claim that in terms of this study, there appears a unifying tendency of Europeanization of large institutions both governmental and industrial at the supranational and national levels, however when viewed from lower levels, regional governments and companies change more according to local needs than to an attachment to European-wide transformations.

## **1. 2 Background**

The Germany industrial complex has been traditionally thought of as an exemplary corporatist state in which industrial actors, banks and the state corroborate to form national economic policy geared to high productivity while sustaining a solid social welfare system.(Herrigel 1996; Vitols, 2000) The French system has also been traditionally labeled state-dirigiste due to the government's overt presence and ownership of major industrial concerns.(Schmidt 1999; Feigenbaum 1986) Both corporatism and state-dirigisme have been structures present in the gas industry. Gaz de France has been a publicly owned enterprise with all of its business strategies dictated by the state. German gas companies have functioned in cooperation with governmental institutions in order to develop their interests and protect their areas of operation.

Gas has not traditionally been an important energy source for European states.(Matlary 1997) Up until the 1980's, the gas market had been characterized by access to small local gas fields, short-distance pipelines, and forecasts of low gas reserves.(Stern 1990: 2-5) Coal, oil and electricity, and even nuclear power in the case of France, had been far more important energy sources before 1980. Gaz de France was created as a national champion to accelerate post-WWII economic rebuilding. In Germany the decline in coal extraction was compensated by gas extraction. The increase in gas consumption has been the product of supply-led policies. New larger sources of gas due to access to Eastern Europe gas supplies after 1990, required new supply lines tied to long-term supply contracts. With supply lines in place and a growing number of gas market companies, a supply-driven gas market was in place during the early 1990's.(Stern 1998: 33-34)



Legislative work had also been a piecemeal response to growing gas supplies. In France discussions surrounding the denationalization of public utility companies in order to respond to the growing need for energy began in the late 1990's. Germany did away with the system of regionalized demarcated gas markets located in its largest regional governments, or Länder, in the late 1990's in order to increase pipeline access to the German gas grid. At the EU level, work on the gas market has been tied to that of the electricity market. It was believed that knowledge gained in liberalizing the electricity market would aid in assessing challenges in liberalizing the gas market. Although the creation of a general internal European market began with the White Paper on a Common Energy Policy in 1985, only two documents contain the requisite provisions to instigate institutional or structural transformations on the internal gas market. This study is concerned with those two documents:

First, *Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas*

and second, *Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.*

### **1.3 Choice of Case**

The focus of this qualitative comparative case study is institutional transformations in the French and German gas sectors in response to EU gas-market liberalization policies. Much of the literature since the 1990's regarding the internal European gas market has: elaborated on the policy formation for EU policy specific purposes (Eldevik 1999; Matlary 1997), expanded the field of energy studies (Geradin 2001; Estrada 1995; Stern 1990 1998), established an economic view (Austvik 1996), explored the legalistic readings of legislation (Moen 2001), or broadened a sociological-organizational perspective (Andersen, Svein 1993, 1995, 2000). France and Germany have been chosen because they represent not just two key European states but are also often cited as central member states that define and

form general momentum in the EU. Environmental policy has also been a crucial component of gas policy at the EU level used to explain why gas is a cleaner alternative to coal, incineration and oil - especially in conjunction with broader policy statements through energy green and white papers. This study will not address those considerations, although they could offer a fascinating study of how one policy area affects another in a European context.

Of the literature discussing the development of the gas market through EU policy, Andersen (2000a , 2000b), Estrada (1995), Eldevik (1999) Matlary (1997), and Stern (1990, 1992, 1998) are closest to the discussion in this study. However my study highlights a period after the identification of the gas market by the EU as a major liberalization policy initiative. In addition my study adds to prior discussions of positions at the EU level by investigating policy formation at the national and subnational and testing for convergence or dissimilarity between EU, national and regional positions.

Andersen (2000a, 2000b) claims that the creation of gas policy in the EU is not the result of EU member states promoting their interests, but rather through cooperative efforts of member states in arriving at a common goal. Neo-institutional sociological theory explains that countries' positions shift because member states' delegates establish relations through common work in Brussels. Their positions become a mixture between promoting national agendas and attaining a common goal through understanding and partially incorporating other countries' positions into their own national positions. Andersen claims that the growth of a common gas policy was motivated not by a competition policy, but by an international development of a new global market economy and market ideology which tugged away at the system of enclosed national markets.(Andersen 2000b:14). The enlarged competencies of the EU in other areas brought on a spill-over affect in terms of gas policy from other policy areas such as competition and privatization EU policies, and also of overlapping interests between other member states. (Andersen 2000a)

Matlary (1997) charts the creation of a common EU energy policy from 1985 to 1995 in spite of the wishes of member states. She argues that a common energy policy resulted from cooperation and negotiations at the EU level. Governments bind

themselves to agreements at the EU level which would then later be pushed through at the domestic level. Energy policy had no legal basis in EU charters and was tied to other matters lacking legal basis; deregulation, the environment and security of supply. In her study, there exists supremacy of power of EU organs - mainly the Commission over the authority of member states, an issue progressed in my study. However by 1998, environmental concerns had receded in importance.

Eldevik (1999: 80-82) uses three variables to explain the content of the 1998 gas liberalization directive: First, a country's energy policy interests. Second, the policy decision-making system in the EU. Third, the negotiation process of the directive in 1997. The informal policy decision-making system exerts more explanatory power than the formal decision-making system in her study. In the negotiation process, common EU results were placed in preference to member state's agendas. Lastly, countries positions were most dependent on the level of public and private ownership of gas companies, with countries with publicly owned gas companies most negative to a liberal version of gas policy in the 1998 directive.

Estrada et al. (1995) charts supply-driven institutional change. According to him, the economic interests of private actors drive the liberalization of the gas market more than policy considerations of individual governments. Economic considerations are boosted by new discoveries of gas, better technologies, new opportunities to gain money on the gas market and more efficient transport lines. These result in lower energy prices for both companies and utilities.

Stern (1998) also looks at economic reasons for the change in the gas market. However, he claims that the EU process was weak and a partial failure in the 1990's. Local markets, regional consumption, increased competition and access to the Eastern European market after 1990 explain the end of national governments as gatekeepers. He claims that liberalization efforts were located in the national state rather than pressed by the EU. He points to individual changes and laws in individual countries. Competition is a result of international energy markets, and not pressed by EU liberalization politics. In whole, he views liberalization efforts as not an evolution of already established markets and principles but rather a devolution of former models. To him market developments are primary to EU liberalization policies. Regulation is

the only method by which to ensure true TPA, as competition will push out newcomers and smaller companies. (Stern 1992; 119-123)

My study focuses on institutional changes that have occurred from 1998 to 2003, affecting relationships between gas companies and national governments. Although gas companies have not exerted major influence at the supranational or subnational levels, their policy influencing capabilities have increased at the national levels. To understand the transformation of the European gas market, one must understand institutional dynamics at not just national levels, but at the European, national and regional levels in investigating where institutional change has occurred.

#### **1.4 Multi-Level Governance.**

I base my analytical approach on the Multi-Level Governance (MLG) conceptual model. I also divide the empirical analysis into three chapters according to three MLG levels: supranational, national and subnational. I have found that the regional level has not been incorporated into any aspect of liberalization decision-making, being rather marginalized. The supranational level has clearly dominated the entire process decision-making process, whilst the national level has acceded more to the EU than incorporated itself into common policy pronounced by member states' policy prerogatives. However it is at the national level where most institutional change occurs in order to fit into EU gas market liberalization policy.

MLG attempts to outline the EU institutional system in a policy formation context. Multi-Level Governance, although not a theoretical perspective, explains how policy formation and implementation function in a paradigm where the state is no longer the sole repository of influence. Whereas all policy decisions traditionally occurred through the national level, MLG explains that political mechanisms and decision-making may occur at the supranational, national and subnational levels. Actors and organizations at those levels may or may not interact with each other. There also exists no system for proportional sharing of policy decision-making. MLG explains simply that in order to understand the current institutional structure of the EU system, a political scientist should research all three levels and possible interactions when approaching a policy area analysis. According to Kohler-Koch

(1999:5,14-23), the EU has created a governmental model based on networks, in which governmental authorities may cooperate at all levels with the rise of stronger institutional arenas and the lessened central importance of national governments. Governments with stronger core statist institutional structures will most change in order to fit into the network governance in the MLG conceptual model. Perhaps the most interesting contribution of the MLG approach is the inclusion of the EU regions as possible actors in the enlarged EU paradigm. (Hooghe 1996; 8-19) (Jeffrey 2000) My MLG analytical approach is better discussed in chapter 3.

### **1.5.1 Macro-Economic Models**

Since this is a study in institutional change, it would be natural to ask how the institutional arrangements have been transformed and then characterize their appearance. When taking the core three countries of the EU, Great Britain, France and Germany, we see three distinct macro-economic models: the British neo-liberal model (Freeman 1989; Stern 1990,1998), the French state-dirigisme model (Jones 2000; Schmidt 1992,1996; Feigenbaum 1985) and the German corporatist model (Freeman 1989; Herrigel 1996). The EU has attempted to push gas liberalization towards deregulation and liberalization in the direction of the British model. The degree of influence between industrial economic models and governmental social interests determine these models. The neo-liberal model is preferred and advocated through the Commission's work and certainly in the case of the gas market. A general European shift towards the British neo-liberalist model has coincided well with policies creating an internal market. In the neo-liberal model the government allows business the open environment to act according to mechanisms present in economic sectors. Neo-liberals see government intrusion as an impediment to economic growth, therefore barriers must be removed. The gas markets of Great Britain and the United States have often been promoted as models of liberalization.

A state may concur with economic integration up to the level that its political or economic system requires adjustment. Liberalization of the gas market incurs costs that transcend the energy policy sphere. One expects that state-dirigisme models most poorly fit in a larger neo-liberalism system and that corporatism systems

are slightly more welcome to the process when the corporatist model of information distribution and consultation continues between government and industry.(Eldevik 1999: 37-39) The shifting position of Germany from advocator to resistor to the Commission's gas directives bespeaks of the purpose of market liberalization demanding a revision of traditional national institutions such as public service or federalist demarcation.

### **1.5.2 State-Dirigisme**

In a traditional state-dirigisme system the government and its bureaucracy exercise authority over industrial policy without consulting societal interests. (Schmidt 1996) In opposition to a pluralist society where national policy is produced through the input of interest groups both in and outside of the governmental apparatus, in a state-dirigisme model, the government produces national policy with the limited participation of interest groups. Therefore, while an environmental group might partake in decision-making process in the various German governmental levels, a common policy influencing choice in France might involve the input of only parliamentarians and ministry officials. (Schmidt 1996:49) By promoting industrial national champions, the state-dirigiste government can see that its policies are well implemented thereby increasing the legitimacy of its bureaucracy and its policies.

To Feigenbaum (1985), state-dirigisme is more apparent through 'public enterprise' or government ownership in which the government is either a major shareholder or the exclusive owner. He grounds the activism of the French state through a historical elite view. An intellectual tradition stresses that collective interests are best conducted by a small group of enlightened technocrats who have been groomed to promote the functioning of the state. A national cultural pattern has been formed through centuries of reverence to authority, the importance of guilds, and the centrality of the state in promoting societal freedoms after the revolution.

According to Jones (1999:63-65), state-dirigisme in France began to take root in the late 1940's as the government was the largest source of investment funds and grants to growing firms. Therefore the French government had an undeniable control over firms' strategies. The government preferred to promote large national

companies to order to create an independent inner market raising tariffs blocking foreign competition. Post-War planning convinced the government to concentrate on key large-scale industries to complement an otherwise fragile medium- and small-scale business sector that paled in terms of international competition. Through a 'national champion policy', the government pressed for horizontal and vertical integration in order to fund expensive national ventures, research, infrastructure and national employee compensation initiatives. In the case of fledgling industries or newer large-scale sectors requiring large amounts of technical expertise and capital, the state believed itself better equipped to supply initial capital than a handful of nascent companies. However according to Feigenbaum (1985) political rather than economic interests guided domestic economic policy. As long as industries remained profitable, it was far easier to reap profits than restructure taxation. The idea of public protection supported by the French government has a long revolutionary tradition. The power of a strong state acts as a social stabilizer guarantying that French citizens are properly taken care of. The French state protects personal liberties and social concerns for the working class while elitism is contained by ensuring that the upper classes serve the state.

Dirigisme has long been the pattern of organization in the French gas market. Gaz de France has been ceded a practical monopoly on the French gas market with the government as its main investor and strategist. Being a groomed nationalized company allowed GDF almost unlimited access to the French market, stable work for its employees and universal service to French citizens. Because the state-dirigisme model is most unlike the liberalization model of the EU's gas policies, the French market stands to undergo more encompassing institutional transformations than Germany.

### **1.5.3 Corporatism**

A corporatist model is marked by the involvement of non-governmental actors in the policy forming process. There exists a habitually expected integration mechanism in which non-governmental interest groups are encouraged and often expected to partake in the political process, even more so than in a neo-liberal

model.(Anderson 1992:26-31) The boundaries between bureaucratic and industrialist ambitions are often blurred in the political process. Decisions are produced in participatory and power-sharing processes. For example the drawing of national German laws requires: legislative negotiations between parties, regional labor and industrial interests, talks between the Länder and the national government, and not to mention municipal governments vested with discretionary budgetary power of over local matters. This mechanism is a component of the federalist structuring of the German government, however the introduction of interest groups and industrial actors lying outside of the political apparatus is a key facet of all corporatist states.

As an institutional model, corporatism is marked by a decreased importance of the state in performing policy formation in the governmental and industrial sectors and monitoring compliance through strict governmental oversight. The federalist structure of the German government offers a comfortable fit for a corporatist model of governance. Offering an industrial account of the German economic system, Herrigel outlines the German corporatist system through what he terms the *decentralized industrial order*. (Herrigel 1996) The fragmented nature of German corporatism is a result of the strength of regional governments with differing taxation systems and infrastructures such as railroads and regional industries. In industrial matters economic actors and their interests precede the state and bureaucracy in promoting economic policy. Herrigel claims that the *decentralized industrial order* predates the founding of a German state. The fragmented nature of various principalities other than the military prowess of Prussia left no large state to oversee and fund industrial expansion. No colonies could fuel early industrialization with raw materials and forced labor. Therefore bankers pragmatically understood their lucrative position of providing capital by pooling together short-term deposits to offer long-term investments and consultation to the industrial sector.

Freeman (Freeman 1989:98-99,106-111,122-127) distinguishes European economic models between pluralist and corporatist: mixed political economy and private enterprise political economy. In a corporatist-private enterprise economy the political process directs the level of influence between public and private interests for economic growth and public revenue. However the private sector is acknowledged to



best understand the functioning of a healthy economy, growth stimulation, avoid economic downturns, and when necessary, mitigate market failures. Unions are more liable to negotiate with private sector officials than public bureaucrats. Active government involvement in economic matters is seen as a barrier to growth, therefore the social planning involving the industrial sector attracts cooperation at the policy formation stage.

In a corporatist-mixed political economy, industry is not always assumed to be best capable of economic policy formation. Political considerations and election results set the cooperative agenda between public and private interests by an electorate more intent on improving and withholding welfare standards of living than capital creation. Organized labor plays a constant role in negotiating on their terms. When labor finds negotiations with employee groups unsatisfactory, they readily turn to public channels of resolution. Whereas in corporatist private-enterprise economies, the government sees its intervention capabilities necessary to stimulate capital growth and economic stimulus, in an a corporatist-mixed political economy, the government's role lies in balancing the same economic considerations with welfare in a Pareto optimal curve based on social rather than macroeconomic stability. Without detailing its transformations, the twentieth century charted the transformation of the German model from the corporatist-private enterprise political economy to that of the corporatist-mixed political economy.

Herrigel further decomposes the German form of corporatism as a *decentralized industrial order* which includes the risk-taking middle and small sized firms which had to compete against each other through flexibility and entrepreneurialism and the *autarchic national order* composed of large companies with strong connections to German banks and governmental apparatuses.(Herrigel 1996:1-2) He claims that the two-layered nature of German industry was a result of a post-Weimar arrangement in which the state could not offer enough support to German industry, thereby sharing economic policy with non-governmental actors. Periods of economic stagnation swayed Germany towards the autarchic national order to sparking policies of national growth in opposition to the decentralized industrial

order with its entrepreneurial potential during periods of economic health.(Herrigel 1996:256)

Level of Governmental Influence:

		Low	Medium	High
Level Of Corporative Independence	High	Neo-Liberalism		
	Medium		Corporatism	
	Low			State-dirigisme

**1.6 Further Contents**

Chapter 2. Theory: The differences between regulation, deregulation, liberalization and privatizations are outlined. I discuss why I have chosen a theory based on institutional change, New Institutional Theory. Lastly I introduce the key concepts of NIE which I use as my dependent variables in my empirical chapters: transaction costs, reductionism and property rights.

Chapter 3. Methodology: I discuss my methodological structure based on the Multi-Level Governance perspective and introduce it as my intervening intermediate variable. After considering the limits of my comparative case study of the liberalization of the gas market in France and Germany, I discuss the research design. I conclude with the operationalization of all variables.

Chapter 4. Supranational Level: I begin with my overall argument that policy formation power has gravitated to EU bodies from other both regional and national levels. I discuss the background of EU gas market policy. My discussion is divided according to key actors and subdivided according to the 1998 and 2003 directives. The key actors discussed are the European Union – more precisely DG Tren and DG Comp of the EU Commission, German delegation, the German gas industry, the French delegation, the French gas industry, regions, and interest groups

Chapter 5. National Level: At the national level, I compare the transposition of EU gas policy in France and Germany. I posit that national discussions are not focused at the supranational but at the national level. At this level I discover gravitation towards neo-liberalist policy, and search for the extent of this transformation. The actors discussed are: in France, the Prime Minister, the Minister of energy, the General Assembly, the Senate, French gas operators, interest groups; in Germany: interest groups – particularly the representatives of the gas industry and gas consumers, the minister of industry and labor, the Bundestag, the Bundesrat, large gas companies, and the Bundeskartellamt.

Chapter 6. Subnational Level: I find that too few structural transformations have transpired at the subnational level to conclude that any true institutional changes have occurred. I discuss what changes have occurred due to EU gas liberalization policy. I also investigate whether the subnational level has any influence on gas policy formation.

Chapter 7. Summary and General Conclusion: Summarization of the three empirical chapters is employed: to evaluate the central research questions, the utility of the Multi-Level Governance paradigm and how macro-economic models of state and industrial relations in the gas sectors of France and Germany may be characterized.

## **Chapter Two Theoretical Basis**

### **2.1 Introduction to the Political Economy Framework**

This study is motivated by transformations in institutional structures. By the end of chapter three I will have introduced and have rendered operational all key concepts of institutions used in analyzing institutional change in this study, specifically: corporatism, state-dirigisme, reductionism, transaction costs, property rights and the Multi-Level Governance perspective. In my empirical chapters I search for evidence of institutional change from state-dirigisme in France and from corporatism in Germany.

In this theoretical chapter I begin by discussing the choices governments have in sector dynamics when applying EU common market policies through the key concepts of privatization, liberalization, deregulation and regulation. I discuss how institutional change can be used to achieve these transformations by defining institutions and organizations. I continue by explaining why I have not chosen public choice and European integration theories in formulating my theoretical basis. I then discuss why I have chosen New Institutional Economics Theory(NIE). I thereafter employ the central NIE theoretical concepts that add analytical order to my study – namely, transaction costs, reductionism, property rights. These central concepts are the dependent variables which I employ in analyzing change at each methodological level in the empirical chapters.

#### **2.2.1 Choices in sector dynamics**

Liberalization is often not clearly explored and presented in the scholarly work of EU policy. The term is deceptively enmeshed in notions of privatization, denationalization, deregulation and regulation. In part, the Commission is vague in defining liberalization, as it would imply tactical requirements, which would transcend the non-national provisions of directives as outlines for market integration. Liberalization also provokes divergent debates at the national level. While in France liberalization is understood as implying privatization and thus a fundamental attack on principles of public service and ownership of GDF, in Germany fears extend to

regulating an industry that should be self-equilibrating. The EU increasingly relegates liberalization to quantitative benchmark measurements of how the new entrants quantitatively and qualitatively enter energy markets. With complete market opening, the EU is able to remold internal markets by changing rules that impose increased transaction costs.

**2.2.2 Privatization**

Privatization is not an explicit parameter of EU policy because outlining the transferring of public property to private hands transcends the liberalization strategies of EU directives. Privatization policies thus originate at the national level. A company may experience complete privatization, or gradual partial privatization that may be termed *private transferring of ownership*, or as in the case of France, *opening of capital*. There exist various variants to privatization including contracting, majority public ownership, unbundling, and partial privatizations. A partial opening of capital may signal that resistance to privatization exists amongst various actors, the government is not certain that privatization is the correct strategy, the government expects to internationalize its sector, or that foreign competition is seen to threaten an industrial sector. A government’s choice to privatize underscores its belief in the private over the public-sector model.

<p>Private Sector Model</p> <ol style="list-style-type: none"> <li>1. Individual choice in the market</li> <li>2. Demand and price</li> <li>3. Closure for private action</li> <li>4. The equity of the market</li> <li>5. The search for market satisfaction</li> <li>6. Customer sovereignty</li> <li>7. Competition as the instrument of the market instrument</li> <li>8. "Exit" as the stimulus</li> </ol> <p>(Hodge 2000: 54)</p>	<p>Public Sector Model</p> <ol style="list-style-type: none"> <li>1. Collective choice in the polity</li> <li>2. Need for resources</li> <li>3. Openness for public action</li> <li>4. The equity of need</li> <li>5. The search for justice</li> <li>6. Citizenship</li> <li>7. Collective action as the market</li> <li>8. Voice as the condition</li> </ol>
---	--

The argument that private sector enterprises are more efficient in profit maximization fails to account for the structural institutional aspects of why the change from public to private ownership occurs. In many cases state enterprises are

more profitable and competitive than their private competitors and a loss in profit may be of a considerable loss to the national budget. (Vickers 39-43) Decisions to privatize are culled through policy making decisions reflecting: constraints presented by the international system of competition and regulation, structure of state companies, the governmental theoretical approach and public choice theory of the political process.(Hoope 1997:7) Vickers (1990:chp 2) grounds the distinction between private and public sector companies in ownership and incentives, competitive forces and theories of regulation. According to principal-agent theory, the public agent ceases to function efficiently when the welfare-maximization and distribution duties are trumped by agents' personal interests. In this case, market-control mechanisms such as monitoring by powerful and wealthy principals shareholders, the fear of bankruptcy, and takeovers induce the agent to share transaction costs with the principal, thereby pushing for privatization. In developing the principal-agent theory, there may exist many principal-agent relationships, privatization is assumed to scale down the links from voter to government to firm by tightening the relationship between the monitoring capabilities of the principal, which may be a shareholder to the enterprise.

The French experience with privatization has occurred in waves with the government bargaining politically to avoid civil disruptions. Initially privatization ideology centered not on an Anglo-American philosophy of neo-liberalization as much as a Gaullist concern towards participation by all sectors of French society. (Dumez 1994:88-89) Privatization encircles an increasingly European integrationist perspective. The French argument for privatization initiated with: a desire to disengage unprofitable companies in the mid-eighties, a drive for efficiency in the late nineties, and in 2003, preparing companies to compete on a European level. Perhaps the most decisive reason of a government's decision to privatize is attempting to balance the national budget through lucrative sales of public sector companies. (Interview 05.06.2003)

Conversely, Germany traditionally has had a smaller public sector. Also unlike France, Germany never experienced large-scale post-war nationalization schemes. The public-sector may rest in the hands of the Länder or of other regional

authorities instead of the federal government. With the exception of the reintegration of Eastern Germany, privatization philosophy has never been a clear prerogative of the federal government as important large and import export-driven private industries have always been more profitable while at the same time aware of labor-sector considerations.(Esser 1994:116) In addition, welfare issues, public service and social responsibility are not addressed through industrial policy and therefore are not the responsibility of firms. It is the state that must provide for the well-being of its citizens. The stability of the German economy has not provoked any prolonged privatization discussion at the federal level.(Interview 02.06.2003) The federalist structure of the governmental system in Germany has not experienced noticeable reorganization of its public sector.(Harrinvirta 2000)

### **2.2.3 Regulation and Deregulation**

Regulation and deregulation are not necessarily antonyms; neither are they opposing processes. In many cases deregulation may simultaneously include regulation. Deregulation refers to the easing of rules governing industrial behavior. Competition allows for market forces instead of social considerations to dictate priorities. Ideally the industrial sector creates more wealth for society through taxation and employment than through government participation and intervention. Oversight may not completely disappear, yet instances of abuse are transferred to a limited single-basis concept investigated through adjudication instead of enforcement by standard administrative procedure. Deregulation can also signify a clearer division of responsibilities between the market and the public sector.(van Bergeijk 1996:8-9) This separation may be due to technological or intellectual advances that the public sector may not be swift enough in comprehending; Its intervention may be viewed as counterproductive. In certain instances, uniformly applies standards by a particular industry may satiate a government's need for regulation.

Regulation may indeed be introduced to ensure market liberalization. Unsurprisingly, regulating is the central component of regulation. An ideal regulator in a neo-liberal context is impartial and independent; ensuring that the optimal balance between supply and demand is maintained. Regulating bodies should be

more competent than the companies embedded in a particular industry because they should possess knowledge over the entire industry. In the French context, the CRE gas regulator is minimally attached to the government and but endowed with the task of ensuring that customers pricing is held at a socially premium level. In Germany the regulator may be indeed be so independent and the corporative compromise system between supplies and consumers be so entrenched, that the regulator can often sidelined to ministerial decisions. Whereas deregulation is mostly used to increase self-controlling mechanisms of the market, regulation according to its paradigms and the wishes of the government may press for control as well as advocacy of market mechanisms.

Newbury (1999: Chp 4) distinguishes between *normative*, *positive* as well as *interest group* theories of regulation. The normative theoretical dimension informs a regulator to base action according to welfare maximization and public interest which may not represent the wishes of all actors. The positive dimension is akin to public choice theory in which the considerations of all actors, consumers as well as suppliers, are considered to inform actions that protect all parties. The notion is that the level of governmental insight is proscribed by an optimal situation for all suppliers as well as consumers. The interest group dimension promotes the notion that certain interest groups are weaker than others and therefore must be protected through regulation that may be deleterious to stronger interest groups. An optimal situation is never attainable and not all suppliers or consumers are treated according to sector or individually. Like the form and level of privatization, the Commission is unclear what the optimal form of regulation is to be created at the national level.

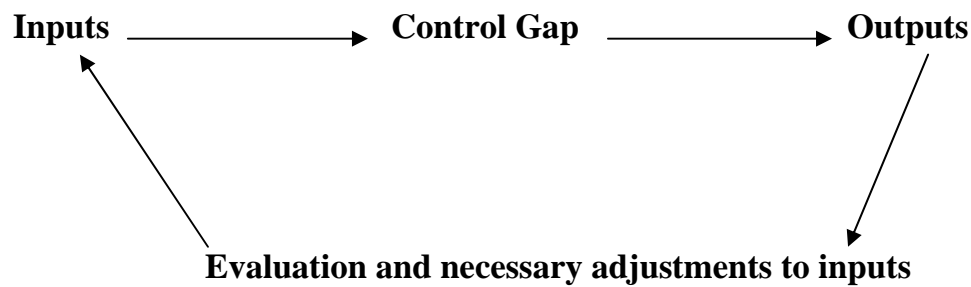
#### **2.2.4 Liberalization**

Liberalization in a purely EU context is thought of as the ‘free movement of goods, capital, labor and services’ between member states as outlined in the 1957 Treaty of Rome. This may be interpreted as: partially dependent on public support for integration, and concurrent with increasing European sentiment at the national level(Gabel 1998), introducing competition into sectors easily disposed to monopoly or oligopoly (Newbury 1999), or elimination of trade barriers, allowing for sectors to



integrate themselves through internal inertia (Tsoukalis 1992). Standard references portray liberalization as a voluntary expansive policy. Yet liberalization requires a reworking of markets structures in order to instigate free movement, and often through negative integration in which the EU bodies play an overtly regulatory role over the liberalization process. Liberalization is more encompassing than regulation, deregulation or privatization because it requires a fundamental reworking of amongst others: legislation, regulatory bodies, breaking of monopolies, restructuring industries through unbundling or privatization, development of new infrastructure, tariffication, and principals contradictory to social principals. EU liberalization policies can increase the number of companies such as in the telecom sector or decrease or marginalize companies such as in the airline sector.

Liberalization has become the central policy concern of the EU since the Maastricht Treaty. Institutions affect decision-making, but not uniformly and strictly. It is actors who weigh benefits and interests, along with transaction costs in order to form decisions that propel institutional change.(Knill chp 2). Liberalization politics in the form of directives are propelled more by individual motives than by institutional inertia. However this applies to changes in macro-political directions or application of specific cases than liberalization politics over long periods. This reductionist aspect directs my case study's inquiry into directive formation and application at all MLG levels. If applying the Nash equilibrium, liberalization occurs to a degree that is not optimal for an individual party but to all negotiation members, stability trumps individual interest maximization. In the following visual model a control gap exists between inputs and outputs. A government or the EU defines the goals of is liberalization process through various measures, tools or inputs. Because liberalization requires redefining rules and paradigms, the process is more complex and encompassing than a narrow policy initiative such as adjusting trade barriers. In the case of EU liberalization, readjusting policy on an incremental basis at success stages occurs. Outputs do not necessarily match input goals due to the control gap which comprises negotiation at the EU level and translation and implementation of liberalization policy at the sub-EU levels.



## 2.3 Theoretical Implications

Proper methodology requests that theory define the interpretational mechanisms of empirical data. Theory and empirical data test validity reciprocally and offer points of contact with other case studies observing differing phenomena. As mentioned, transaction costs, reductionism and property rights become the empirical chapters' variables. Transaction costs are not limited to the production costs of reorganizing distribution. They involve the imposition of new inter-European frameworks and transferring competencies appropriately as desired by the Commission. Gathering information to function in a larger market, adding legal capabilities to handle new regulations, lobbying at all MLG levels, and redefining industrial relations offer sizable transaction costs as a result of EU liberalization policies. Because NIE, unlike other institutional theories, has been inspired by economic dynamics, institutions are not progressions of statically-mind groupings or organizations. There are specific actors who wield transformative authority and fashion the direction of institutions. Gas policy does not receive the public scrutiny of European citizens. There exist only few central actors who exert the will and influence to mold institutional transformations. The crux of NIE lies in the negation of rational static equilibria. Institutions are constantly transforming entities. These are the theoretical implications with which the variables are applied.

## 2.4 Choice of Theory

### 2.4.1 Integration Theories

European integration theories such as neofunctionalism (Keohane 2001; Hoffman 2001) and neo-sociological theory (Andersen, Svein 2000c) respond to the problem of the limits posed by more classical theories such as liberal

intergovernmentalism (Ruggie 1998) and such as realism (Moravcsik 1993, 1998; Mearsheimer 1994) by inquiring into the purpose, nature, identity and existence of the EU as a non-state institution and organization. The EU can be thought of not fitting into the classical definition of statehood yet is concomitantly more powerful than a multi-national organization such as the OSCE for example. In addition the European Union is still not easily depicted as it is sui generis, its future expansion is unknown, and academics play a vital role in directing the formation of the EU through theoretical work. European integration theories explain the continuous formation of the EU as found in 'multiple interactions as it is about developing feelings for the play of collective European governance and polity-building, as well as the inevitable normative and ethical questions to which these processes give rise'.(Chrysochoou 2001: 8-9) However European integration theories do not offer sufficient explanatory elegance for the research questions posed. My case study's explicative purpose is not only the relationship between state and the EU at the supranational level, but also the transforming relationship between industry and national government at national and regional levels.

#### **2.4.2 Public Choice**

Theories of public choice in political science are more adept in accounting for economic perspectives at any governmental level. Public choice's weakness lies in strictly applying neo-liberal economic principals to political phenomena while largely neglecting transformations and costs that cannot be explained through rational models.(Mueller 1997;McLean 1987;Dunleavy 1991;Heap 1992) Its focus on endogenous factors lacks a mature institutional perspective to incorporate intangible goods and the role of public goods.

There exist four general components of public choice:

1. Individuals form the basis for decisions and behavioral patterns for institutions and political entities.
2. Individuals possess specific tastes and identifiable preferences that they attempt to maximize.

3. Individuals are selfish and individual gains trump collective interests.
4. One can understand and predict behavioral patterns if once preferences, tastes and desires.

Obsessions with rational decision-making in certain variants of modern political science, whether game theory, public choice, or institutionalism render useful within theoretical limits or assessing outcome possibilities. However it is too narrow in entertaining possible outcomes not at all interpreted through rational choice, especially in complex political arenas where a plethora of ideas, preferences and choices are not always the result of individual behaviors and tastes. At times the action of policy-making may be haphazard due to vague knowledge of preferences or self-interests. Inversely, the inputs considered to weigh upon decision-making may be so complex and detailed, forcing uncertain decision-making on the part of political actors. Public choice believes in an optimal state such as found in the balancing of supply and demand in economics or Pareto-optimality. New Economic Institutionalism although initially cumbersome when interpreting empirical data, offers the elegant explanations in understanding sector dynamics occurring at all governance levels.

## **2.5 Defining Institutions**

A major weakness of NIE (Demsetz 2000;Mäki 1993;North 1990,1993,1995;Williamson 1984, 1985, 1986) in opposition to older institutional economic theories counterparts (Commons 1934;Schumpeter 1943,1968;Veblen 1914, 1923) is its normative deficiencies. Older institutional economic theorists focused on the specific defining attributes of institutions; how they produced decisions; how they effected economic change. NIE theorists are more concerned with how institutions function in terms of more abstract variables such as reductionism, transaction costs and property rights. There appear to be varying conceptions of what constitutes an institution even amongst scholars of the same theoretical schools in New Institutional Economics.(Ankarloo 1999) (Rutherford 1994) (Stettler 1999) Institutions can be claimed to be regimes, rules, physical

entities and groupings of like-minded individuals. The frameworks set by institutions guide systems' preferences and rules. In addition, one cannot calculate the costs of operating empirically or theoretically in an institutional prism through mere demand and supply; even transactions have costs in themselves and are not evident or transparent. One point of clarity among both old and new institutional economic theories is that institutions allow transactions in the form of collective decisions to be more efficiently conducted. NIE is bound in the idea that institutions gain legitimacy because they reduce the uncertainty of conducting transactions due to their institutional logic of appropriateness. I base my understanding of institutions by defining organizations distinctly from institutions.

Initially I claim that institutions are generic and replicable whereas organizations are specific to a polity or culture. In terms of this study corporatism and state-dirigisme are institutions. Institutions are composed by rules, both informal and formal. Formal institutions are legislatures, juries or firms and informal institutions such as democracies, due process, and international trade are not bound to specific cultures. They may be abstractly decomposed, studied, improved and reorganized. Institutional permanence is determined by the ability to present diminishing transaction costs in political or economic relations. Informal institutions are the result of interactions between organizations or actors such as corporatism and dirigisme, and how actors relate to each other. The challenge for institutional theorists is placing the EU in an appropriate institutional category because it is neither a multilateral institution, but rather a unique phenomenon. The EU is an organization. How the EU behaves and functions in its institutional structure is still baffling as it is a *sui generis* organization. Organizations are static and more abrupt in their appearance and disappearance. The dismantling of one organization does not directly affect the abstract or normative existence of other organizations. Organizations relate to each other as organizations. The Bundesrat, the Commission, BWG, the city of Frankfurt, Ruhrgas, the Bundeskartellamt, etc are organizations.

### **2.6.1 New Institutional Economics**

My use of NIE responds to my need in understanding how EU energy policy from 1998-2003 has affected institutional change in the relationships between governments and gas companies of France and Germany as a result of the restructuring of the European gas market. I have culled the three relevant NIE concepts into my variables: 1. transaction costs, 2. reductionism, 3. property rights I apply these variables in the comparative case study in order to test which variables explain the institutional transformations occurring in the framework of this case study.

The largest cause of disagreement in NIE literature is whether economic growth fuels institutional innovation or whether institutional innovation fuels economic growth as a catalyst of change. I contend that economic growth fuels institutional innovation as the French and German governments have become more willing to institute the requirements of the 2003 directive allowing their national companies to profit from larger trans-European gas markets. Douglas North (1993:254) accords institutional transformations to political or economic entrepreneurs who identify personal gains through institutional change, and in many cases technical change. Others believe that institutions evolve in their environmental context. Hodgeson (1993) and Williamson (1996) posit their arguments in a framework transaction costs. Demsetz (2000,1985) points to resource endowments and the transfer of property rights.

According to Harriss in a broadly acceptable manner, “New Economic Institutionalism starts from the reality that information is rarely complete, and that individuals have different ideas (or mental models) of the way in which the world about them works. Transactions thus have costs associated with them which are assumed not to exist in the neo-classical model: these are the costs of finding out what the relevant prices are, of negotiating and of concluding contracts, and then of monitoring and enforcing them. Institutions are broadly defined as means of reducing these information and transaction costs.” (Harriss et al. 3: 1995)

## **2.6.2 Analytical Basis of NIE**

Neo-liberal models best explain how a rational elastic market devoid of governments function without accounting for the organizational and social dimensions of various economic systems and their idiosyncrasies which are not mathematically fungible. In many respects, neo-liberal economics proposes an ideal market devoid of rules beyond the purely economic. NIE attempts to incorporate the various factors that portray economic systems as a formation of accepted rules and the reasoning behind rules' transformations. For example in institutional absence, information on national pricing would not exist, rather left settled between buyer and seller during every new transaction. Companies would not know how to furnish their markets effectively. Disagreement would occur over the possession of property. A chaotic market burdened by expensive transaction costs would not supply markets according to expectations - neither profitable for consumers nor for suppliers. According to Coase (1937), institutions exist because they contain and decrease transaction costs. Because information gathering is costly and difficult to compile, nationally accepted economic rules mitigate economic confusion. Yet, even with complete information it is difficult to act rationally. Institutions respond to the lack of rationality by providing uniformity and order, allowing organizations to function horizontally. NIE claims that economic structures are reflected through their institutional arrangements. NIE scholars look at how institutions inform economic activity and how institutions are consciously arranged to take advantage of economic development.

### **2.6.3 Institutions in NIE**

According to NIE, institutions are formed because they offer greater economic rewards through cooperation, efficiency and more rational decision-making.(Stettler 1999:3-6) Institutions are created and formed because they decrease the transaction costs of conducting transactions on an individual basis. The ordering of institutional frameworks is refined to interact with the changing possibilities offered by the liberalization of the European gas market. France and Germany have traditionally had different institutional frameworks ordering their national gas markets because transaction costs were dependent on the national frameworks not on a larger EU

framework. However the liberalization of the gas market has placed new transaction costs on the gas industry therefore a different institutional framework is required. One would expect a movement towards similar types of institutional frameworks as both countries increasingly respond to similar transaction costs.

There is an important difference between organizations and institutions in NIE literature. Institutions are thought of as rules or guidelines that bind organizations together. Institutions can be thought of formal rules exposed in laws and regulations or informal rules establishing behavioral patterns regarding how organizations or individuals relate to each other, such as between governments and gas companies. Institutions are accompanied with oversight or regulation to ensure their functioning. Organizations are thought of as the results of the entities allowed or outlined in institutional rules.(North 1993) Therefore the orderings of corporatism and state-dirigisme can be thought of institutions embodying both informal and formal rules whilst governmental bodies, gas companies and other entities such as regulatory authorities or interest groups involved in the functioning of the gas market can be understood as organizations. Organizations also can be thought of containing individuals within the institutional framework.(Furubotn 1997;7)

According to Kasper (1998; 28-31) institutions require a common sanctioning in order to attain applicability, not all institutions expose positive effects to their members. Kasper makes two further important distinctions between internal institutions and external institutions. Internal institutions are the informal institutions that have evolved from human experience, where as external institutions are imposed and enforced from a higher authority. Finally institutions in addition to normal neo-classical price constraints affect the choices taken by organizations. Williamson (1984:195) tell us that organizations and firms are the results of governmental structures. The question once again becomes whether institutions affect individuals' behavior or whether individuals guide institution choices. I have found in this study that institutions transform themselves according to transaction costs until a key individual or a group of key individuals decides to consciously rework institutional frameworks. Shifting property rights are more the effects than the causes of



institutional transformation. This is an important point in understanding whether institutions are the 'made order' or 'spontaneous growth'.

#### **2.6.4 Institutional changes according to NIE**

My variables, reductionism, transaction costs and property rights are proposed as the most important reasons for institutional change within the context of New Institutional Economic Theory. Efficiency is interpreted by Stettler (1999:82,97) to be the motivation behind all institutional change. When rents or production can be made more efficient, institutional change occurs. This could be thought of as lying in a public choice or even a neo-liberal economic direction; however New Institutional Economics stresses the bounded rationality of its actors bounded by the information constraints of operating within their own institutions. Institutions exist to allocate resources more efficiently between large groups of people willing to cooperate with each other, therefore the choice of property rights requires institutional change so that individuals can cooperate more efficiently and minimize external effects deleterious to efficiency. The choice of governmental structures is the optimal solution in overall systemic efficiency. In addition, when hierarchies occur, institutional structures become focal. External institutions require political entrepreneurship by political agents as explicit rules must be changed if the existing rules are not able to adapt in increasing efficiency.

Another catalyst to change is the force of globalization where competition at the economic level forces governments to impose institutional changes, termed by Kasper as 'institutional competition'.(Kasper 1998:395-397) NIE theorists often speak of equilibrium which can be equated to optimal movements towards efficiency. Bromley (1989:12-34) finds the overall camps of institutional change to be motivated by four differing view points. I place those points in terms of relevance as reflected through my empirical research: First, a hierarchical level in which institutional change is sifted from policy levels to organizational levels and then further to the operational level. Second, the North model in which overall institutional environments affects change. Third, a property-rights view in which principal agents

attempt to increase their share of property rights. Fourth, induced institutional change by as a result of technical change.

Williamson (1996:324) stresses that governance structures tie individuals to their institutional environment. Institutional reform ultimately affects the fairness of property rights for all those involved. NIE theorists generally emphasize that institutions are neither perfect nor complete. Strong institutions are marked by pliable mechanisms allowing them to internally adapt to external influences, from mundane rules to violent irrational occurrences. This can be extended to notions of attempted efficiency in an irrational universe that refutes the possibility of pareto-equilibrium. (Furubotn 11:1991), actor-driven initiatives in opposition to the ‘rules of the game’ (North 1990:8; Pejovich 1995:37), game theory purists (Aoki 2000:12), Smithian ‘invisible-hand explanations’ (Rutherford 1994,1983), competition and efficiency (Anakarloo 1996:29), change driven by external changes due to economic growth or in Schumperian terms of technological improvements (Yeager 1999:47), and social value. (Tool 1997:843) My empirical conclusions as discussed in my final chapter sway towards the notions proposed by North and Pejovich of institutional changes most clearly molded by actor-driven initiatives.

NIE theorists are often criticized for not taking a holistic view of institutions and for not being able to provide enough statistic modeling to describe institutional evolution. Pejovich (1995) proposes that information gathering is more akin to a knowledge-creating competitive process. In relating information gathering to opportunity costs, new information allows actors to reform old systems through changing rules and frameworks in order to exploit new opportunities. “Innovation could be the development of a new good, the opening up of a new market, a new source of supply, a new method of production or a new method for reducing transaction costs. Innovation explicates the meaning of economic development into the expansion of choices” (Pejovich 1991:159). Furthermore, an actor’s freedom to innovate is defined by an institution’s rules and spontaneous rather than evolutionary.(Rutherford 1994:83)

Many NIE theorists such as North, deny that merely rational actors and technical efficiency are the most decisive factors in causing swift institutional

evolution. Because cognitive limitations do exist, and the gathering of information presents a heavy transaction cost, institutional evolution occurs due to instructionist mechanisms replacing the Darwin selectionist proposals of institutionalists during the early twentieth century.(Drobak 1997:349) North believes that institutional changes are adaptive to external transaction costs in addition to being allocated by third parties with agents taking advantage of opportunities.(North 1993: 257) My research is in accord with the case that the liberalization of the gas market is due to strong entrepreneurs and external transaction costs. More than transaction costs, legislation penetration is most effective in instances where strong actors are close to the EU legislative process, thereby causing abrupt transformations in policy. Information gathering affects the nature of institutional change in a functional manner where new information is added to actors' prior knowledge, unlike the supposition of neo-liberal economics which depict economic decisions based in short-term information on cost and technology. I found that the concepts of technological efficiency and its benefits discussed in NIE literature to not be a relevant variables in institutional dynamics.

Imperfect reality shows that transaction costs are never zero, preferences shift and individuals are constrained by bounded rationality, lending the possibility of mathematical modeling in proposing a preferable system rather than normative shifting realities.(Furubotn 1991: 359 -360) Because institutional dynamics respond to containing transaction costs, following the transformation of formal and informal rules empirically explain organizational changes. Costs such as larger distribution demands, increased competition, and new post-ante rules can be contained through vertical and horizontal integration, which also have their own costs. Because of these larger decisions are reasons lying outside of neo-liberalist paradigms based on concepts external to the functioning of governments such as globalization, information-gathering, and technological innovation, governments continuously adapt their institutional structure to benefit from changes in the market. In sum, NIE is valuable to my study because it proposes that institutional changes are not unintentional and may occur in response to a plethora of tertiary conditions lying outside supply and demand considerations. Once again I concentrate on the transaction costs, reductionism and property rights variables.

### **2.6.5 Reductionism**

In NIE, individual actors become concerted agents for institutional change. Underpinning the notion of institutions is a sense of cooperation between individual for collective gains.(Stettler 1999:chp 1) The principle-agent theory outlines the duties of a agents acting on behalf of their principles.(Knudsen 1993:275) Also embedded in NIE is the notion of bounded rationality. Because there exist too many individual precedents, the agent makes public choices according to his best knowledge. The agent is also entitled with the power to control common property rights through either formal and informal contracts.(Richter 1998:285-292) Williamson calls these formations of agents, bureaucracies or hierarchies with each head agent responsible for the decisions of a particular division. (Williamson 1996:17-18)

Scharpf (1999) explains that institutional change in an NIE context occurs through the desires of actors imbedded in institutions who define their own advancement with that of institutional change. Therefore entrepreneurial actors are at the core of institutional change. Bounded rationality is the outcome of institutional frameworks and the impossibility of all possible information. However those agents who affect institutional change possess more information than their counterparts. Because not all individuals possess influence capabilities in larger organizational settings, there exists a division between entrepreneur-coordinators and implementation agents in policy-making. Capable decision-making actors are aware of this constant knowledge deficiency and attempt to collect only relevant information.

The interests of key individuals may often trump collective will. To Oliver Williamson, “atmosphere implies that changes to exchange relationships can encourage or discourage altruism, trust, and cooperativeness, and that organizational effectiveness has to be viewed more broadly than the usual efficiency calculus would dictate.”(Rutherford 1995:49) The NIE individual’s maximization tendencies are limited by rules and closeness to the goods being transacted. It could be assumed that an individual in a public organization would exhibit less maximization

characteristics, but as we shall see in the supranational level, a public actor is closer to and therefore seek influence and information instead of money and physical goods. Rules may also inform the interests of individuals rather than conversely. An individual who conducts contractual negotiation identifies personal maximization according to institutional rules and transaction costs decision considerations. Lastly, individuals enter institutions with formed biases and competencies that may explain a sudden change in organizations' decision-making patterns – as shown through the change of governments and governmental posts at the national level. Therefore governmental and industrial positions are often better explained by understanding factors of an individual's decision-making and the organizations in which they are embedded rather than purely charting holistic and exogenous institutional transformations.

#### **2.6.6 Transaction Costs**

Transaction costs are the costs surrounding economic, political or social exchanges. Furubotn (1997; 42-47) identifies the following seven transaction costs as most important: search and information costs, bargaining and decision costs, supervision and enforcement costs, managerial transaction costs, the costs of setting up an organization, the costs of maintaining an organization and political transaction costs. For example, how communal energy is supplied is dependent on the political organization of the municipality, how information regarding energy supply is organized, the time placed in negotiations, the strength of the institutional endowment, what parties are present and how effectively they relate to each other, what political exchanges are sacrificed to conclude energy supply - in addition to the costs identified through neo-classical modeling. The sum of conducting these transactions costs individually is superior to the efficiency of conducting transactions through institutions. At the microeconomic level, transaction costs should be added to production costs and “define, protect and enforce the property rights to goods”.(North 1990:28). Institutions' forms and sizes are the result of responding to these costs. Vromen (1995:50) speaks of selection mechanisms by political actors in replacing the ‘invisible hand’ with the ‘visible hand’ to perpetuate abrogated

institutional rules invariably increasing short-term costs in order to not jeopardize long-term transaction costs. Institutional changes are very costly and only occur when exterior parameters change thereby relegating former institutions too weak to respond to new costs

Williamson (1995: 20-22) distinguishes between ex-ante and ex-post transaction costs in contract forming. Ex-ante costs surround those costs in forming a transaction or contract, such as negotiation, deliberation, or each time a MLG level prepares gas liberalization legislation for ratification. Ex-post costs denote the costs of ascertaining the legitimacy of those transactions or contracts, such as regulation, anti-trust persecution or other legal action. Contracts specifying formal rules in NIE are thought to work well in complex institutions, especially public institutions with many actors and transactions where credible accountability is a basis for long-term stability. However adherence to informal rules is also vital in filling the gaps between formal rules that may in fact be cumbersome or unnecessary. For example, to gas companies, long-term take-or-pay commitment are dependent on the proper contractual mixture of formal and informal rules in instances of deregulated markets in which exogenous changes affect the shape of future contracts.(Masten:1985) Therefore a change in formal ex-ante costs due to EU liberalization policy eventually alters the ex-post contractual nature of gas supply to consumers and governments because new transaction costs arise and others become redundant: Once again pointing to my overall empirical finding that institutional change occurs within a hierarchical structure in which institutional change is sifted from policy levels to organizational levels and then further to the operational level.

NIE explains that institutions shift, transform or are replaced not by rational demand and supply calculations, but by transaction costs formations which are better explained by differing sets of rules, informal and formal constraints and property ownership. Institutional shifts occur in minimizing these transaction costs because information is limited yet necessary to produce efficient economic systems. Rules exist informally and haphazardly until they are codified formally. Large entities such as institutions produce contracts to both decrease transaction costs and systematize rule cognition. Therefore the EU, impeded by irrational prior knowledge does not

impose a tailored system on the political economic institutions of France and Germany, but by adjusting the rules and shifting transaction costs, allows for a self-guided transformation of national economies. The Commission does not demand political reformation at the national levels, however according to NIE, economic systems are results of shifting political rules and political parameters rather than rational cost calculating societies. The directives of 1998 and 2003 explicitly describe formal rules leaving the actors to create the informal rules present through acknowledged practices in the gas industry affecting institutional change.

### **2.6.7 Property Rights**

In my study, property rights denote shifting property rights in terms of gas company ownership. However property rights tend to be of little importance. Negligible institutional transformations have occurred at the regional or subnational level where the largest shifting of property rights has occurred. Conversely no property rights have occurred at the EU or supranational level and the national level where institutional change has occurred.

In neo-classical economics it is assumed that the market is best equipped to divide goods amongst citizens regardless of property rights ownership. Marketing, transportation or extraction of gas can be protected against harmful external affects by shifting the property rights of gas to more competitive actors. The transfer of property rights occur when transaction costs or external affects weaken the distribution of the gas, which, is in fact a common good or common property right. According to NIE, property rights transfers do not denote exclusive rights of goods considered to belong to the public domain - even though profits are no longer reverted to the government. When private ownerships goods are defined as public domain, public actors may still define how they allow the public to access their goods through private concerns. The rights of profit, how effectively the good is produced and decisions affecting its distribution are transferred along with a good's property rights. Property rights also define the ownership of a good and how that good is shared among individuals residing outside and inside of the ownership group.

Therefore property right transfers occur under concerted efforts with much prior discussion between public and private actors. (Stettler 1999:34, 39, 50)

In the case of the liberalization of the electricity market in the EU, institutional structures define the characteristics of differences between member states. In responding to the reworking of electricity markets, states can either reevaluate their regulatory system or when necessary property rights. (Glachant 2000:322-333) The state adds legitimacy to property rights by introducing a system of property that can be broadly accepted and legally regulated - for example deciding to what extent gas in France is a public or private right and how it is to be parceled among end consumers of gas, or in Germany the privatization of Stadtwerke.

Even though EU energy liberalization policy does not outline how gas rights are to be reordered, the internationalization of the system along with introduction of regulation render older systems not as effective to capitalize on larger gas markets, thus causing a reevaluation of property rights in both France and Germany. According to North the appropriation of property rights demands 'legal rules, organizational forms, enforcement, and norms of behavior – that is, the institutional framework.'(North 1990:33) The issue of property rights offers the most succinct understanding of institutional change occurring in Germany and France, extending beyond merely private or public ownership, or even a mixture between both. This extends to including what expectations the state is allowed to retain from former public institutions – reverting us to the distinction between privatization, deregulation, regulation and liberalization in the beginning of this chapter, in addition to guarantees of public service and third party access which will reappear in the empirical chapters.

Although a private actor usually divides common goods in order to increase his profit he may not be coerced to act in such a matter. Private actor with relative rights under the liberalization politics of the Commission could be expected to be present in all member states. Explicit contracts become the key between state and industry along with sufficient oversight, because gas is a common good. Increased competition, larger demand and supply, and increased service have become the reason for property rights transfers. Structural uncertainty may also explain why the



reallocation of resources may be more effective than recontracting.(Maki 1993:281) I would expect this to occur in instances of large overall institutional change occurring in the European gas market. Therefore it would be reasonable to assume that the liberalization of the gas industry would promote a general transfer of gas property rights in countries that are attempting to exploit larger European gas markets such as with traditionally public-owned companies such as GDF or smaller Stadtwerke in Germany.

Property rights are generally divided into two categories in NIE, absolute and relative.(Furubotn 1997:77) A general trend that I have found in the European gas market is a movement from absolute to relative property rights in order to enable the free movement of gas. Absolute property rights empower complete ownership and the power to exercise complete decision-making over a particular national or regional gas market. Relative property rights are based on agreements describing limitations of ownership enabling a multitude of options in the EU's drive towards the free movement of gas in Europe. In many cases property rights are issued to develop infrastructure and ensure long-term contracting. Governments may assign relative property rights to avoid market failure. (Furubotn 1997, 122) Accordingly, in considering relative property rights governments have the possibility of specifying site, physical asset, human capital and dedicated assets. Not all rights are transferred with property right transfers (Williamson 1985:85) The transferring of ownership of gas companies can be understood as residing in relative property right as energy is defined as a common good vital to industry and citizens' wellbeing - even if the profit might ultimately belong to private actors. A problem of overexploitation of common pools of goods such as gas in a market extremely defined by private actors often demands regulation. Borrowing briefly from regulation theory (Eisner 2000; 5, 19-22), the EU has inserted regulation clauses in the 2003 gas directive because as a relative property right, gas has been considered by the Commission a common good in the public's interest with bureaucrats more adept than legislators in exercising their technical knowledge over the gas industry.

## **2.7 Conclusion**

In this theoretical chapter I have presented NIE as the basis for understanding and analyzing institutional change for the rest of this study. I have singled out the relevant theoretical NIE concepts of reductionism, transaction costs and property rights as independent variables in identifying the non-spurious factors behind institutional change in the French and German gas markets.

Because differing strategies are possible to member states applying EU policies in national markets, I presented choices that governments may take in applying the 1998 and 2003 EU gas directives – namely privatization, regulation, deregulation and liberalization. I then discussed the uniqueness of NIE to be found in its discussion of transaction costs, as institutions exist and are constantly dynamic because they adapt to constantly transforming transaction costs. In the case of this study, transaction costs are tied to liberalization pressures posed by EU energy policy through the 1998 and 2003 gas directives, thus effecting institutional change. I concluded this chapter by presenting the independent variables of reductionism, transaction costs, and property rights which analyze the empirical information presented in chapters 4-6. The three variables are employed to qualify the type of institutional change in the gas sectors of Germany and France in the final summary and analysis chapter. In addition to the variables based in my theoretical approach, I use the multi-level governance approach in my methodological structure. Therefore it is necessary to introduce the multi-level governance approach in the following chapter – along with its usefulness to this study.

## **Chapter 3 Analytical Basis**

### **3.1 Introduction**

In this chapter I discuss the methodological approach of my study. I begin with a discussion of the qualitative methodology used in this study, which includes the comparative case study, and research control parameters. Thereafter I present the general concepts of the multi-level governance perspective. I cull the MLG concepts most beneficial to this study and employ them as my intermediate variables - namely the supranational, national and subnational levels. Lastly the information discussed in MLG and NIE is presented through three dependent variables and one intermediate variable.

### **3.2 Methodological Considerations**

#### **3.2.1 Qualitative**

My units of analysis, France and Germany, render the study's MLG data pool a small n study most appropriate to qualitative methodology. A quantitative approach would be more effective had this been a study comparing institutional dynamics among a plethora of regions and communes where actors number considerably more than those at national and supranational levels. The qualitative method allows me to sift through large amounts of varying material: secondary, statistical, oral, archival and documentary evidence in a periodically unstructured or haphazard manner in order to uncover information that can be overlooked through quantitative research documentary. Processing the data in a structured mathematical method would require increasing units of analysis in order to control the independent variables instead of drawing logical inferences through my explicative models. This study also incorporates a historical presentation of the empirical data thickly bound to a theoretical model analyzing how institutional changes may have occurred in an unanticipated and heteroscedastic process that renders the quantitative method weaker in examining minor incongruities. (Maxwell 1996:17-20). Understanding how events affect and identifying independent variables common to the France and Germany's competing economic systems would raise doubts of spuriousness in a

quantitative study. Lastly a qualitative method allows for analytical depth instead of breadth, in understanding the connections between structures than accounting for distinct variables. (Madsen 1979:67)

### **3.2.2 Comparative Case Study**

There exist two possible inadequacies with my research design. First, in choosing standard EU national economies, it would be logical to also include the United Kingdom and its neo-liberalist model. However I choose to exclude the United Kingdom because its gas market, which had already been liberalized before the first gas directive, is used as the Commission's example in forming directives. Second, due to research economy and resources, conducting research of all French and German communes and regions at the subnational level would exceed the parameters of my qualitative research design. Therefore I have searched for representative subnational level units charting transformations of regional gas policy. I rely on an isolated clinical case analysis (Smelser 1973:59-60) in which I searched for exceptional cases isolated from the general patterns found at the subnational level in order to control for spuriousness.

Because this is a multiple case study involving only two units, Germany and France, I use the comparative method to isolate variables in a historical context and relate them to phenomena in piecing together a causal analysis. (Smelser 1973; Andersen, Svein 1997, 1990:373) Lijphart (1971:686-690) believes that the comparative method can compensate for small numbers of units in four steps. First, when possible, increase the number of cases. Unfortunately only Germany and France suffice as isolated cases in the context of EU gas market liberalization implementation failure. Second, reduce the property space, or number of variables of the analysis if the number of cases cannot be increased. Therefore I draw my independent variables from NIE and my intermediate variable from MLG. Third, focus the comparable analysis on 'comparable cases' or countries with comparable systems or situations. Even though France and Germany represent dissimilar macroeconomic structures, they have been resistant to the liberalization of the gas market, and represent central states that normally push for European integration.

Lastly, chart positive and negative comparisons and focus on the variables that explain dissimilar variance - in which MLG is a valuable structural tool.

### **3.2.3 Validity and Reliability**

Cases studies require vigorous structural attention because the open structure does not provide researchers with a standard approach in analyzing data. All data, variables and empirical information must be integrated to produce one result or conclusion. A researcher of organizations, according to Andersen (1990:121) is rarely able to work in an experimental fashion since the possibility of controlling variables or factor is difficult and not fruitful. According to Yin (1993:33-38) all solid qualitative studies must meet: construct validity, internal validity, external validity and reliability.

### **3.2.4 Construct Validity**

Considering construct validity, the researcher first defines which phenomena are to be observed and described. Then the researcher designs a data collection process dependent on multiple sources of data. The researcher then places the evidence in an organized pattern known as triangulation that decreases the probability of personal interpretations or skewed documentary analysis arising from using few documentary sources. Literature regarding the liberalization of the gas market expounds mostly on institutional dynamics at the supranational level, whilst assessing industrial and technical changes at the national level and ignoring transformations at the subnational level. I have relied on multiple sources of data. I have searched the archives of Le Monde, the Economist, the Financial Times, Frankfurter Allgemeine, other newspapers and energy policy newsletters along with documents of the French senate and parliament and the German Bundestag, French energy regulator, German Monopolkommission and others. I have approached statistical data as a general reference and compared results with those of other organizations. Most of my primary information derives from 21 personal on-location interviews ranging from 30 to 120 minutes that I conducted through fieldwork in Brussels in November 2002 and in Paris, Germany and Brussels in May and June 2003. I also conducted over 55

telephone interviews of varying lengths and over 42 email exchanges according to empirical need. I conducted all interviews, conversations and emails in the informants' native languages in order to provide for stimulating exchanges of information and accurate understanding of empirical data collection. I found that conducting interviews in informants' native languages added to the pleasantness in the collection of empirical data.

### **3.2.5 Internal Validity**

Internal validity requires ascertaining whether conclusions can be drawn through repeated analyses of data and whether spurious or irrelevant evidence has skewed the analysis from the initial inquiry to the conclusion. Ottar Dahl (1997: 10-15) advises *critical empirical observation* by confronting theory with concrete observation material and the interplay of systematically resurfacing components of theoretical research design with hypotheses in mitigating instances of merely interpreting research as a documentary investigation for positivistic purposes instead of theory testing. Presenting analysis in a time-series analysis is itself a dialectic process in which logical choice instead of haphazard descriptive rhetoric reflects the author's explanation. I have therefore charted institutional transformations against the following key documents:

1. *Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas.*
2. *Directive 2003/55/EC of the European Parliament and of the Council of 3 February 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.*

### **3.2.6 External Validity**

Because this case study is based on the qualitative method, generalization as a component of external validity is analytically rather than statistically based. As a general rule, when applying the same theoretical basis to the same or similar case

study, other researchers should through a replication of logical and empirical data arrive to similar conclusions. A more ambitious study tests the strength of the theory and aids the theoretical school in reassessing the internal validity of the theory itself. This study does not generalize the transformations of other state-dirigisme and corporatist systems within the EU, however it can be used to for comparisons to other studies that apply a three level MLG structure and a NIE framework in assessing their explanatory value. Additionally I discuss the empirical fruitfulness of both NIE and MLG in the concluding chapter.

### **3.2.7 Reliability**

Reliability behoves a clear presentation of the research method and the procedural structure of data collection so that later investigators can arrive repeatedly to the same conclusions.(Yin 1994:32-38) My research was conducted during discussions of a new EU constitution, the Commission's ECJ cases against France and Germany, and the last formations of reworked gas directive. I have therefore conducted anonymous interviews, which I have transcribed for later verification and analysis. In addition strikes against the French government's pension reforms left many of my French interviewees uncomfortable in formally discussing changes to the gas market. Regional actors were also initially unwilling, or thought themselves incompetent to speak of public sectors changes. My German interviews expressed very partisan positions and were less willing to reveal information that would compromise their organizations' views. I systematically sought out opposing informants, but also unbiased third parties. Data collection from the subnational level posed a major hurdle without resorting to quantitative methods. I contacted Länder, exemplary communes and prominent gas companies in Germany. In France there are hundreds of communes, of which most have no gas policy competence, allowing me to search for variance between communes. All of my data collection exchanges were conducted confidentially. I do not reveal the identities, dates or locations of my interviewees in this printed text. I may be contacted through the Political Science Department at the University of Oslo for data-gathering control, as I retain copies of all interviews and exchanges.

### **3.3.1 The Multi-Level Governance Approach**

In order to strengthen my qualitative comparative case study, I embedded my three NIE variables in the multi-level governance levels in order to investigate where institutional change has occurred.(Hooghe 1996; Jachtenfuchs 1996; Kohler-Koch 1998, 1999, 2003; Scharpf 1999) MLG functions as my methodological structure. MLG does not explain how the EU evolves nor how policy development functions, or even which levels benefit from an expanding European system. However it does explain that in an EU context, traditional policy-making structures centered around the national level have been expanded to include actors and organizations found at the subnational and supranational. As a methodological perspective, MLG does not portray how much influence the supranational and subnational have gained over the decision-making process. I use my research to see how the power divisions have shifted from the national level to the supranational and subnational levels in terms of the liberalization of the gas market from 1998 to 2003.

MLG explores how traditional governance and economic systems originating from the nation-state have devolved, opening for the entrance of new actors and legislative processes from the supranational EU and subnational regional levels. The post-Westphalian state-centered model which arose due to commonalties in religion, language, war or evolving political structures no longer offers an effective governance model. Because no supranational state has become superior to EU member states, the new arrangement coordinates a new constellation of actors at various levels connected through common policy issues and institutional procedures. The MLG perspective does not apply only to decision-making structures. It applies to the entire constellation of governance between citizens and officials and ultimately to the preferences of civil society. Interaction between differing levels of governance increases as the EU system is developed through joint decision-making.(Kohler-Koch 2003:11, 13) Pooling resources and economies-of-scale that promote power sharing between all three levels are more beneficial than either conflictual interstate policies or formal negotiations between governments, allowing for diffusion of the goals of governance among all actors. Although MLG does not propose that an overarching



European state will emerge, actors representing unique European identities can more easily influence other states in economic policy without having to depend on traditional state-to-state diplomacy. EU integration taxes new demands on the state-centric conception of: 1. negotiation capabilities and responsibility of politics. 2. transformation of political structures and processes, and 3. transformation of statehood.(Jachtenfuchs 1996:22) Although MLG scholars disagree whether the state-centered model will be trumped by a new governance structure marked by a supranational European government in collaboration with a Europe of the Regions - in an ideal MLG perspective, all three levels apportion policy-making according to policy networks rather than hierarchical structures.

There is little agreement between governance scholars as to the appearance of the novel EU system. Since this study relies on MLG's analytical strength in comprehending the totality of institutional dynamics in light of European integration (Benz et al. 1999; Jeffrey 2000; Kassim 2000; Hooghe 1996), the multi-level governance perspective is imposed on the division of chapters to explore the empirical transformations at the supranational, national and subnational levels. The introduction of other actors along with coalitions sharing similar political preferences as opposed to a closed number of ruling authorities tugs away at strict national groupings in Brussels.(Marks 2000:808-810) A governmental official often constrained by national interest groups or party affiliations may find that allowing decision-making capabilities at the EU level become a elegant solution in tacitly promoting legislation that would meet resistance at the national level - in a sense exploiting the failure of citizens to acknowledge that the EU is a relevant participatory and decision-making institution.(Marks 1996:349) Also, increasing informal rules participation in the political process or, agenda setting, can lead to the exclusion of actors who do not comprehend the new institutional rules and structure of MLG. Economic interests groups and regional governments are more likely to collude with the supranational level in expanding policy areas, whereas citizens' interest groups lag in shifting attention from an exclusive national arena focus. Just as the concentration of power in the state is decreased, so is that of central domestic actors who must share their authority with actors at other levels.

Other governance perspectives ask how overlapping competencies or interests have transformed bureaucracies, social policies and industrial institutions. The MLG term *overlapping competencies* explains that actors are no longer tied to their area of immediate operation. They may be present in other institutional structures at other levels in order to promote their interests. For example, while Gaz de France exhibits strong political visibility at all levels, regional gas companies such as CFM are apparent only at the subnational level. In MLG, policy networks form decision-making structures (Scharpf 1999; Marks et al 1996a, 1996b, 2000; Ansel et al. 1997) in which actors form interest bonds or negotiation parties according to EU relevant issues regardless of level embeddedness. The decreased centrality of the state allows for a distributive policy formation scheme in which various interests groups and actors are able to influence policy at all levels and circumvent national governments when necessary. Rhodes (Rhodes et al. 1996:381) explains that an actor's success in controlling agenda-setting depends on his understanding of negotiation through policy networks and the forming partnerships to reduce transaction costs.

Kohler-Koch estimates that a system of governance without a core government will replace systems such as corporatism and dirigisme in a wider MLG perspective. (Kohler-Koch 1998:9) In the informal and formal institutional setting of the MLG model, levels become interconnected according to formal and informal rules so that policy making becomes more fluid and legitimately deliberative when necessary. Without the institution settings of the EU, state actors would be required to rely on their nested interests in less frequent formal settings. Consequent directive implementation is mandatory at all other MLG levels regardless of states': objections, divisions of between governmental branches, prior legislation, constitutional separation between national and regional authorities, or the sanctity of national sovereignty.

### **3.3.2 Supranational Level**

Unlike actors at the national and subnational levels, supranational level actors have been confronted with constructing a governmental structure and a common identity from no prior institution basis by gradually gravitating power from the

member states. In order for the EU system to function independently and legitimately, EU institutions such as the Commission, European Court of Justice and the Parliament must be assumed to be at least as institutionally competent and knowledgeable as their national counterparts - and even more capable in absorbing supranational level transaction costs. According to Kohler-Koch (1999: 20-23), EU governance attempts to guide governance formation at the supranational level between the organizing principles of political relations between majority rule and consociation: and the constitutive logic of the polity between the common good and individual interest. The problems of governance implied by this division rests on the specificity of formal rules spelt out by IOC treaties, transferring authoritative and technocratic competencies between DG's, the growing number of institutions whose transaction costs minimizing capabilities would be insufficient at other levels - and informal rules for which functionalist theory does not sufficiently account. These flexible informal rules account for the problem-solving capacity and the desire to harmonize policy-making at the EU level. Permanent 'policy communities' have developed to confront constant negotiation requirements, for example budgeting issues.(Heinelt, Hubert et al. 2003:136) In the EU system, cross-organization consultation occurs in a much more informal fashion than at the national level even when the formal accountabilities of individual institutions are defined.( Benz 2003:104-105) In sum, national and subnational actors are able to interact with supranational actors according to policy network needs instead of in a hierarchical fashion.

### **3.3.3 National Level**

Ideally, this new form of governance does not result in a zero-sum loss for the state. Monopolizing agenda setting at the EU level is not in the interests of supranational actors who desire to strengthen the EU's institutional legitimacy. The state may through the Council request that the Commission prepare directives for discussion. Thereafter the Commission sends directives drafts to the working groups consisting of national representatives for further acceptance. The Council is not the only national level institution; national gas companies, lobbyist representations and

national consumer groups are also entwined in policy-formation. European integration eventually dictates institutional harmonization between countries affecting their policy styles, policy ambitions, conception of co-ordination with the supranational level, nature of the political opportunity structure, and administrative opportunity structures.(Kassim et al. 2000: 250). The transaction costs of maintaining national infrastructure and economic growth are aided by uniform guidelines. The state still retains competence over strictly endogenous issues in instances when national interests are not incompatible to commonly formally defined EU policies. Economic and social actors also benefit from the devolution of national politics. These actors transcend national parameters and channel policy networks to their advantage thereby exploring the opportunities of aggregating competencies in larger arenas. In order for national governments to adapt to EU policies, long-term structural changes must occur at the national level beyond the immediate policy issue area. National patterns of adjustment occur more readily in corporate systems in Germany than in state-dirigisme systems in France.(Kohler-Koch 2003; 15-16) Also national foreign ministers have lost their traditional high influence in negotiations as national governments have become more coordinated in involving various other ministries in EU policies in order to effectively negotiate specific policy issues in Brussels.(Maurer 2003:68,71) Even though national parliaments have been latecomers in the EU process and are poorly capable in dealing with matters of EU policy, both the German and French Parliaments have developed formal reporting structures in order to make their positions clear to national representatives in Brussels. (Maurer 2003:71; Benz, Arthur 2003:97)

### **3.3.4 Subnational Level**

MLG has instigated a wealth of literature specifically regarding the empowerment of subnational level actors. (Ansell 1997; Benz 1999; Hooghe 1996:chp 3; Jeffrey 1997,2000; Keating 1995, 1998; Le Gales 1998:19-221) MLG portrays regions as occupying a territorial, political and functional space. In the functional space, regional governments enter into power sharing arrangements or policy networks within the supranational level and each other as the EU accedes them

authority, money, legitimacy, information and organization. (Balme 1996: 221) A *Europe of the Regions* is formed because the interests and needs of regions are often neglected by national governments, allowing regional actors integration into EU arenas of negotiation. Due to the harmonization of political differences in the Europe of the Regions, regions are no longer hampered by their national paradigms and limits to their policy-making authority. The main brunt of the subnational level in the MLG paradigm is that regions search for cohesion in order to act as strong bargaining clusters negotiating with other groupings in the MLG constellation. (Kohler-Koch 2000:70)

Additionally, in order to equilibrate differences between regions and urban areas, DG Regional Policy coordinates technical and economic assistance through structural funds according to developmental need. In this bottoms-up approach, regions formally enter the decision-making process through the Council of the Regions. Regions are to explore a common cohesion policy in which regions identify each other according to social or economic policy networks outside their national contexts and collaborate in order to promote their common interests. Private subnational actors are also able to disassociate themselves from the constraints of national policy by promoting their interests in EU arenas. Regions are institutionally integrated into the EU polity at the Council of Regions, including increased lobbyist and information exchange capacities through permanent representations in Brussels. However as seen in chapter 6, my empirical research reveals a differing conception of the subnational level.

### **3.4 Terms, Variables and Hypotheses**

I now present my variables employed in the empirical chapters:

#### **Dependent Variable:**

*Changes that have occurred to the institutional structures between the gas industry and governments of the French and German gas sectors as a result of the European Union's liberalization of the energy market in the period 1998-2003.*

The institutional structures between the gas industry and governments are understood in the context of this comparative case study as corporatism in Germany and state-dirigisme in France as well as France and Germany as unitary state models in terms of the liberalization of the gas market. As state-dirigisme in France and corporatism in Germany no longer truly characterize the structures between the gas industry and government, I analyze and compare the emerging institutional arrangements throughout the empirical chapters as well as the concluding chapter.

I derive the independent variables and the first three hypotheses from key NIE concepts and the intermediate variable from the MLG analytical structure:

**First variable, *reductionism*.** I discussed in 2.4.1 that key entrepreneurs in the decision-making process are responsible for institutional transformation when they identify their own benefits in negotiating institutional rules and transaction cost mitigation. Institutional transformations are expensive and difficult undertakings, rarely occurring haphazardly, and can be the results of key actors who take the initiative to rework institutional rules.

**Hypothesis 1:** Institutional transformations have occurred to state-dirigisme in France and corporatism in Germany because key entrepreneurial actors have exercised their policy-making capabilities. These key entrepreneurial actors are the instigators of institutional change.

**Second variable, *transaction costs*.** Transaction costs are thought of as the rules that surrounding an economic, political or social exchange. When transaction costs become too large to bear due to large shifts of institutional rules such those imposed by the 1998 and 2003 gas directives, then institutional transformations occur to minimize those costs and also to aid organizational existence.

**Hypothesis 2:** Institutional transformations have occurred to state-dirigisme in France and corporatism in Germany because transaction costs have become too costly for the existing institutional structures. Directive 98/30/EC and directive 2003/55/EC have imposed specific transaction costs forcing institutional transformation so that the gas industries of France and Germany can compete and continue to exist.

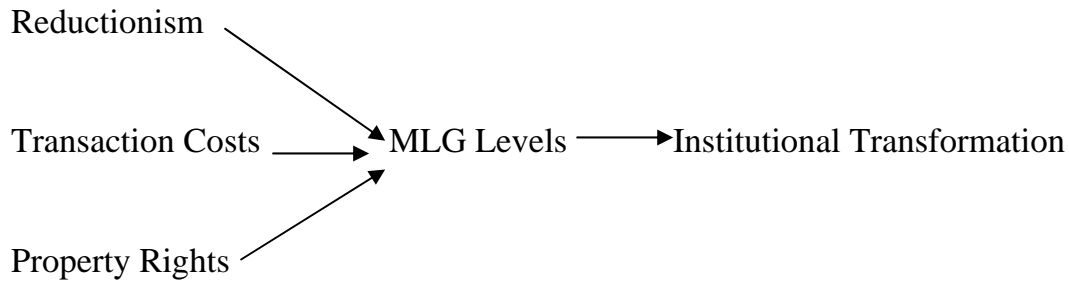
**Third variable, *Property rights.*** Property rights affect the ownership of a common good, the definition of its distribution – and the role of the state in regulating the division between private and public interests. The liberalization of the gas industry demands that national governments reassess the ownership of gas companies and of gas as a relative property.

**Hypothesis 3:** Institutional transformations have occurred to state-dirigisme in France and corporatism in Germany because property rights have been redefined or been shifted between actors affecting the ownership of gas companies and their mission as either public or private enterprises.

**Intervening variable, *MLG levels.*** A secondary concern relating to the study's central research question is understanding how EU energy policy through the 1998 and 2003 directives has sifted from the EU level through the national to the regional levels. I employ the intervening variable to analyze how the largely state-centric model has been institutionally transformed in response to the 1998 and 2003 gas directives. The MLG perspective explains that the traditional state-centric model has given way to one in which a multitude of actors in various levels both public and private affect policy formation according to the exercise of specific policy areas. I apply the MLG perspective to specifically investigate for changes in the specific levels.

**Hypothesis 4:** Institutional decoupling of the supranational, national and subnational levels as a result of the 1998 and 2003 EU gas directives are responsible for institutional transformation.

Below is a diagram of my conceptual model:




---

<b>Independent</b>	<b>Intervening</b>	<b>Dependent</b>
<b>Variable</b>	<b>Variable</b>	<b>Variable</b>

### 3.5 Operationalization of Variables

I now present what I deem the criteria in evaluating the theoretical aspects of the empirical data and the empirical indicators needed to fulfil the definitions of the following criteria:

**Corporatism:** Corporatism is the informal cooperation and dialogue between governments and gas companies. Gas company agents are consulted when legislative work is being prepared. The level of regulation is decided between gas companies and governments.

**State-dirigisme:** A particular government controls and regulates most aspects of progress of gas companies. A major prerogative is the public ownership of gas companies. Gas company employees are understood as governmental servants. Legislative initiatives regulating the gas market are initiated and terminated in governmental organizations.



Reductionism: Individual strong actors are concerted agents for institutional change in the gas market. These strong actors or key entrepreneurs identify their duty as related to transformations in the gas market and the strengthening of their organization.

Transaction Costs: Transaction costs surround economic, political or social exchanges relating to the gas market. When these changes are too costly to maintain institutional transformation occurs. Transaction costs in this study originate in the 1998 and 2003 gas directives.

Property Rights: In my study property rights denote shifting property rights between public and private domains in terms of gas company ownership and also of gas as a public or private good.

Multi-Level Governance: The decoupling of the state-centric model into a model of supranational, national and subnational levels as a result of the liberalization of the gas market leads to institutional change. Due to the devolution of the state-centric model, the liberalization of the gas market manifests institutional transformations in these levels in different times and ways.

### **3.6 Conclusion**

This chapter has allowed me to formulate the methodological structure of this study through the MLG paradigm. I have explained why I use the qualitative comparative case study in constructing my research and limiting my case to the gas industries of France and Germany. Lastly I present reductionism, transaction costs and property rights as my independent variables and the MLG levels as my intervening variable. I am equipped with the necessary theoretical and methodological tools necessary in discussing and then analyzing: chapter four the supranational chapter, chapter five the national chapter and chapter six the subnational chapter.

## **Chapter 4 Supranational Level**

### **4.1 Introduction**

In this chapter I discuss the institutional dynamics at the supranational, or EU level. The MLG perspective has uncovered lacking subnational involvement, whilst the supranational bodies of the EU have clearly waxed their authority over gas market liberalization policies at the supranational level. I argue in this chapter that the specific institutional dynamics due to liberalization at the supranational level are marked by a top-down process, in which the EU progresses its volition at the expense of member states' political prerogatives. Because the liberalization of the gas market is a process emanating from the supranational level, I begin with a background of gas policy in order to place the three empirical chapters in context. Employing variable 1, reductionism, I divide the analysis into sections marked by specific actors involved in gas policy in the EU, Germany, France, the German gas industry, the French gas industry, regions, and interest groups. I begin the discussion of each relevant actor's involvement in the liberalization of the gas market with the implementation of the 1998 directive, 98/30/EC, and then the negotiations of the 2003 gas directive, 2003/55/EC. I conclude this chapter with a summary of institutional changes along with a review of each MLG-level actor's involvement at the supranational level. My general research findings were that the governments of France and Germany were initially entrenched to the respective formal structural arrangements of state-dirigisme and corporatism whilst the companies of the gas market were disengaging themselves from traditional relationships with their governments in Brussels in order to pursue competitive opportunities offered through gas market liberalization. The superior institutional authority of EU organizations has made institutional structures emanating from the national level inefficient at the supranational level. Therefore state-dirigisme and corporatism have shown signs of weakness at the supranational level.

## 4.2 Framework

I propose that the conceptual tool necessary to understand the process of Europeanization lies in institutions' possession of superior institutional authority. The current direction of European policies is guided by organizations that exercise superior institutional strength. This strength is developed through technical and specialist knowledge, a capable and honest staff, the ability to employ legal regulation when necessary, sensitivity to current economic paradigms, a broader comparative knowledge of the European constellation normally hampered by the bounded rationality of nation-states - and not just agenda-setting, but also the ability to decide on policy details and transaction costs. Superior institutional authority has shifted from the member states to the Commission, the Council and the European Parliament so that decision-making capabilities and compliance powers are gravitating to the supranational level. In addition this superior institutional authority is especially exercised at the expense of lower subnational levels. The member state is not acquiescing to EU policy due to consensual pressures and an interest in arriving to common agreements, but rather because the EU is exploring its institutional strengths and ability to require common positions, even though the Council is a forum for the member states.

The Council is only one of various organizations, most of which do not represent states' desires. The process of including of various non-state actors increases the democratic and political fluidity of the EU legislative process. There does exist an exit-option for the member state, even though it has not yet occurred. The existence of unique EU competences, EU solutions and EU institutions must be understood as independent of states' will. If the EU is to be an organization with more capabilities and powers than other IGOs, than it must also be superior to the nation-state in most respects, thereby affecting former national institutional models such as corporatism and dirigisme. Once the EU reaches maturity, all prior theories will be of little relevance.

### 4.3 Background

Liberalization of the gas market has been a relatively new policy area for the EU beginning with security of supply and environmental concerns forwarded by the White Paper (COM (85) 310) on a common energy policy of 1985, and thereafter accelerated by the Single European Act of 1986 which pressed for an internal market. (Matlary 1997:19) Energy was a new EC policy area because it had been not been included in the Rome Treaty of 1957. Energy was traditionally considered a matter of national sovereignty and an important facet of industrial growth and stability, most lately after the oil shortages of the 1970's. Liberalization has been in step with the creation of a gas market through supply-side policies exploring gas, electricity and renewable energies exploration and transportation in replacing the traditionally more important sources of energy - coal, oil and nuclear power. By the publication of White Paper COM (85)310 "Completing the Internal Market" in 1985, gas had already been a well-developed source of energy in Great Britain, the Netherlands and Germany. Gas had also become a large growing energy source in other European countries due to EU policy, accounting for increasing consumption, better domestic infrastructure, governments' wishes in reducing dependence on foreign oil, and the findings of new sources making gas more competitive to traditional energy sources coupled with new pipelines connections with Russia, Algeria and Norway. (Estrada 1995; 35-38) 197.97 million cubic tons of gas were consumed in 1985 as opposed to 302.54 in 1998. Consumption is expected to reach 410 million toe by 2010 when imports will exceed internal production. (European Commission 2001: 69)

Work on the gas market has always followed that of the electricity market; partly due to cogeneration production efforts and the Commission's belief that both markets require similar policy prescriptives. The Commission has traditionally begun liberalization efforts in the electricity market with the notion that the reforms achieved in the electricity market would be replicable on the gas market. (Interview 16.10.2002) The general idea found throughout the Commission is that a larger electricity market must be fueled by a larger gas supply.

A key dilemma is that the EU can not control its gas supply as it is dependent on imports originating outside of the EU. The major source of gas is found in the ex-USSR which provides the EU of 41% of its gas imports and 17% of its total sales through pipelines entering through Europe's largest gas transport nexus in Slovakia and secondarily through Poland. Norway supplies 29% of imports and 13% of total sales of EU gas imports through Emden and Zeebrugge pipelines. Lastly, Algeria is the third largest importer to the EU representing 25% of EU imports through Andalusian and Sicilian pipelines.(European Commission COM 2000: 40-42)

Not a competence spelt out by prior treaties, the Commission began its work sparsely by creating new competencies in the gas market under the mantra of environmental issues and security of supply initiatives. Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users had almost no effect on the gas market. The directive was to form a basis for comparing prices between large users. It did not provide for any negative or positive integration and detailed no action necessary by the Commission in the case of non-compliance. Council Directive 31/296/EEC of 31 May 1991 on the transit of natural gas through grids was only slightly more interventionist and opened the problematic case of third party access (TPA). It broadly required owners of transport grids to open space to other transporters of gas. However this directive also lacked the power to enforce TPA as there was again no compliance authority. The Commission's role was to record transactions and in rare cases request that community law be pursued. Lastly, the directive was narrowly addressed to applicable gas companies, being large transporters. In rare cases when addressed to specific actors, transposition is not required by member states. Therefore France issued a decree reworking articles of prior laws and Germany never transposed the directive into national legislation.

Apparent that these two directives did little to open the market to liberalization, the Commission began the process of acquiring technocratic competence and planning for a more specific directive. The work on a new directive began in 1992 but was dismantled in 1995. In 1995 the Commission decided to establish a committee of 20 experts (95/539/EC) composed mainly of representatives

of gas transmission companies. Their role extended to advising on technical, financial and legal conditions of transit, its economic and social factors, along with exploring the possibility of TPA. The Council set aside funds for building long-distance high-pressure pipelines and made explicit its intent that gas would be a part of its security of supply and cleaner energy mandate. These legislative measures gave the Commission and the Council better capacity to progress on a directive with appropriate content.

Work on Directive 98/30/EC commenced in 1992 and was marked by major resistance by all member states except for the UK, which was itself used a model for liberalization. France proved to be the country most skeptical to the directive. Germany, following the example set by the United Kingdom, claimed to open its market completely. The specificity and extent of the directive can be seen as a success for the Commission. Four conflictual issues characterized the formation of the directive: level of market opening, take-or-pay contracts, level of public responsibilities, and level of transparency.(Eldevik 1999:35) Companies were to unbundle themselves by splitting their activities and accounts into transportation and distribution entities. Third party access to interregional transportation gas lines was to be systemized by easily accessible information. Oversight was to be decided on a negotiated or a regulated basis; that is either informally negotiated between consumers and suppliers groups, which fit well into the corporate nature of Germany, or by an independent regulator. The provisions were to arrive in three stages: 17% by 2000, 25% by 2004 and 33% by 2007. A consensus passing the directive in the EP had been reached in 1998 after 6 years of negotiation between the member states' energy working groups.

By 2000 Germany and France had not met the minimum qualitative and quantitative market opening requirements. Legal action against both countries was brought to the European Court of Justice by the Directorate-General for Energy and Transport, or, DG Tren. In 2001 difficulties arising from transposing the 1998 directive into national laws, combined with the low level of market opening and conflicting levels of liberalization between member states convinced the Commission to construct another directive, *Directive 2003/55/EC of the European Parliament and*

*of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.* The Commission was in a different position than it was in 1990. It had not only the sufficient technocratic competencies supported by external bodies. It had proved also that it was willing to adjudicate non-compliance and that it could specifically identify bottlenecks towards market opening. The liberalization model of the gas market had already been accepted by member states. The directive was once again introduced as a package directive along with electricity. The major differences in the new directive were complete market opening, appointment of an independent regulator thereby dissolving negotiated access, competition at the distribution level for households, legal unbundling of activities, and TPA was to be legally defined. The notion of public service and universal coverage highlighted a notion that the Commission was to respect the social implications of markets transformations to the point of allowing for derogations when necessary. In the new directive, regulation was made ex-ante with the threat of a European regulator if necessary and gas was considered either a good or service and therefore made an internal market competence of the EU.

The expedited process proved so successful that the Commission had sent a request for a new security of supply directive to the Council and Parliament in 2002 in light of shortages in North America and Europe. This 2002 security of supply directive proposal will not be discussed in my text. The following two sections will compare changing institutional dynamics of the implementation of 1998 and the negotiation of the 2003 to describe the relationship between industry and state and the supranational level.

## **4.4 European Union**

### **4.4.1 Implementing Directive 98/30/EC**

The European Union plays an indelible role in shaping the relationship between the gas industry and states while careful that its policies not be interpreted as explicitly encroaching into the sovereign energy policies of member states. During the implementation of the 1998 directive, the EU's political work was committed to at the very least ensuring that member state transposed the directive at the national

level. In these implementation matters the European Parliament (EP) and the Council had little authority in ensuring compliance. There exist little legislative procedures regarding enforcement of an EU gas regulator. In addition the Treaty of Rome does not contain references to privatization or energy; therefore the 1998 directive did not contain references to the reorganization of domestic gas markets. However, monopolistic markets marked by nationalized companies were understood by the Commission as inhibitors to market liberalization.(Interview 11.11.2003) At the same time the Commission gauged that the directive's provisions were sufficient in promoting the qualitative measures of unbundling, increased TPA and the appearance of competition, and of quantitative measure dictating gradual market opening of 33% by 2007. During the implementation phase, DG Competition investigated companies for monopolistic behavior and DG Tren searched for cases of qualitative and quantitative non-compliance by countries. In such a manner the Commission was able to increase transaction costs in cases of obstruction of liberalization in the gas market.

DG Competition's gas, petroleum and electricity section comprises of 8 people who have since the adoption of the 1998 directive been closely following developments in the gas market. Setting precedence is the most critical duty of DG Comp and its staff has been proactive in examining industrial behavior. Unlike DG Tren, to DG Comp there exists no ideal market as long as there are low entry barriers and many suppliers.(Interview 15.10.2002) DG competition operates on an ex-post basis tying its competencies to the Maastricht treaty's articles 81, 82 and 86 which are the anti-trust and competition articles dealing with transportation, state aid and merger regulation. Article 81 states that organizations must not practice activities distorting the market of member states to the harm of others organization through monopolization. Article 82 states that organizations may not abuse their dominant positions in markets. Article 86 states that a member state may make no laws and a company may not apply economic policies not in line with directives and EU treaties. Unlike other DGs, DG Comp does not engage itself in the legislation formation process. In certain cases DG Comp can propose legislation to the EP under article 86 which must then be considered.



DG COMP can open a case as part of an investigation, a formal complaint, or ex-officio action to informal market information. Through article 11 letters the DG can request information or even plan raids and copy concrete information. Their work has little semblance to incorporating various opinions through discussions groups and is limited to investigating anti-trust, mergers, state aid and market control their activities become problematic when competition is inhibited.

Five cases set precedence for the gas market. First, in 1997 DG Competition found in applying article 86 that GDF did not meet its public service obligation as the whole French territory was not covered by GDF's service. Second, DG Comp accepted the merger between Exxon and Mobil (IP/99/708) in 1999 as long as it did not weaken competition from smaller companies from the market. It was understood that the Commission was not negative to large companies that could strengthen European-wide presence at the expense of national market concentrations. This sent a silent signal to other European companies wishing to merge in order to strengthen their international presence. Third, the Commission settled a case between Marathon and Thyssengas in 2001. (IP/01/1641) The Norwegian subsidiary of Marathon complained that a group of gas companies including Thyssengas refused to grant sufficient TPA to continental pipelines. Thyssengas agreed in improving commitments in hourly balancing, trade in capacity rights, congestion management, transparency and handling of access requests. Fourth, the 2002 case against the Norwegian Gas Negotiation Committee or GFU (IP/02/1084) was more influential. The GFU marketed and sold the gas of the two largest Norwegian companies Statoil and Hydro on the European market. The GFU was thought to be a barrier to supply competition. The end of the GFU was beneficial to French and German customers as the practice of joint marketing was made unacceptable in relation to the direct selling of gas. Lastly, a case involving gas supply contracts between German Wingas and Electricité de France Trading in Germany (IP/02/1293) allowed for long-term contracts as long as these contracts did not impair other companies' ability to accept contracts with the same wholesalers of gas. These cases set the precedence for individual companies' behavior, and confirmed the superiority of EU law to that of national regulation and law in the area of the internal gas market.

DG Tren's main interests were ensuring that member states transposed the 1998 directive and more importantly that they met qualitative requirements and quantitative requirements. (Interview 05.2003) The opening of gas markets coupled with transposition of the directives without the requisite quantitative measurements were not considered sufficient. The period between 1998 and 2001 was used to observe which provisions of the 1998 directive were not sufficient and to identify which member states acted as inhibitors to gas market liberalization. At the same time DG Tren was careful to appear judicial and considerate. Therefore member states were given 2 years to transpose the directive and the possibility to begin dialogue with the Commission when encountering difficulties. For a country to derogate, it would have to inform the Commission of appropriate TPA cases and wait four weeks.

The period 1998-2000 was used to convince member states of the benefits of market liberalization. In addition DG Tren stated that it never specified what type of unbundling it preferred as it has been consistently clear in not wanting to reorder national infrastructures, preferring to leave it a topic better decided at the national level. The Commission had taken a view allowing the mergers of VIAG and VEBA into Eon, VEW into RWE. It had also appropriated a billion dollar program towards building trans-European pipelines. During the 1998-2000 period EU competition commissioner Karel van Miert made it clear that long-term contracts would continue with large customers but that would question long-term contracts that restrict competition. He also made clear that fortified security of supply would result in improved consumer protection. Coaxing Germany and France through discussions between energy ministers and DG Tren had little effect in the transposition of the directive. Therefore DG Tren acted by publishing progress reports and threatening court cases against both countries for failing to transpose the directive into national law. A two-volume report found that gas carried by TPA provisions reached only 1% in France and 2% in Germany. New entrants to the French market found that distance-related transmission tariffs combined with only one practical entry point to be serious cost barrier to new entrants, and that the network access procedure and payment system were too complicated. It was reported that high charges and

pancaking were problems in German contracts. German companies' rigid and bureaucratic handling of grid access requests were often not processed in time, and the absence of concrete information about bottlenecks and availability of capacity detracted third parties.(DWI 2001: 41)

The Commission was skeptical to French public service and public statutes, believing that the public service argument was cast too wide. It allowed however the reconfiguration of public service obligations to be settled through the national level. In the case of Germany the Commission was outspoken against pancaking and the lack of transparency. EU never spoke of what type of ownership it preferred, but advocated unbundling between transportation and distribution entities. The Commission finally accumulated enough evidence to bring court trials against France and Germany. The Commission's files were approved for consideration by the ECJ in December 2001 in prosecuting France in case C-259/01 and Germany in case C-64/03 for not having transposed the 1998 Directive. (European Court of Justice 2002, 2004)

#### **4.4.2 Negotiating Directive 2003/55/ EC**

Apparent that liberalization was not reaching its goals in 2000, the Commission set on creating a proposal at the behest of member states for a more specific, farther reaching directive than the 1998 document.(Interview 17.10.2002) Directive 2003/55/EC, 26 June 2003 "Concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC", or also known as the acceleration directive, required 3 years from when the Commission began work on the new directive reached a common position in February 3, 2002. The 1998 directive required almost seven years.

The case against Norway's GFU was taken as a success for the Commission as an extension of its competency over putative national monopolies. The Commission began to bring national regulators and energy authorities together for discussion. Both the EP and the Commission wanted a gas industry increasing the number of companies between producers and customers, so that the EP and the Commission would not appear to override their competencies but allow member states to control

their own regulation. The Commission declared that by 2006 it would research if the extent of separate accounts were enough, and that it would in 2007 published a progress report on liberalization policy's effects on the energy market in order to readjust policies. In "A Long-Term Vision of a Fully Operational Single market for Gas in Europe", 28 January 2002, the Commission made it clear that it wanted a fluid market without long-term contracts.

During negotiations of the 2003 directive, the European Parliament was much more closely involved in pressing for the adoption of liberalized gas market legislation. This was a break with prior policy. During the early nineties the European Parliament was known as a fierce opponent to general market liberalization. Because European Parliament MPs do not represent their countries' positions as much as their parties' and interest groups' positions, common party positions amicable to liberalization efforts helped in processing the 2003 document with relative rapidity through both readings. Two of the three rapporteurs, rapporteur Mombaur of Germany and shadow rapporteur van Velzen of the Netherlands were members of the European People's Party, the party most representative of stronger liberalizations policies in the EP (European Parliament Com (2002) 488- C5-0449/2002-2002-020-(COD)). MP Turmes of Luxembourg, an electricity rapporteur of the Green party was indicative of the new positive posture towards internal market policies.(Interview 28.05.2003) TPA was expanded in the second directive from accounting to legal unbundling of storage, transportation and distribution. The EP wanted to even include unbundling of pipelines, but did not go that far.

After the first reading of the 2003/55/EC proposal, the text was expanded to include distribution as well as transportation clauses to the displeasure of both the French and German delegations. The Commission was however very headstrong in pressing for these expanded liberalization clauses, stating that backlogs posed by France and Germany would not delay liberalization of the internal gas market. The Commission wanted to expand its authority to include existing gas contracts which however did not meet common approval. France and Germany were fiercely against unbundling, especially unbundling at the level of localities. Germany did achieve an unbundling exemption for companies with less than 100,000 customers. At the same

time the Commission no longer considered the German *Verbändevereinbarungen* agreements of the negotiated option valid. (Interview 27.05.2003)

The Luxembourg presidency's proposal in 1998 already increased the Commission's power. Under the Spanish presidency, gas policy was pushed up to ministry level. The 2002 Danish presidency separated energy and environmental issues in order to accelerate discussions. All member states excluding Germany considered giving the Commission the authority to decide on TPA contracts and their derogations. Loyala de Palacio said that a liberalized market would offer a higher level of service and universal service, because the customer would be able to choose their supplier, type of service, ascertain quality in clear contracting. (Le Monde October 7, 2002, *Electricité*.) At the Stockholm summit, the Commission along with EU ministers pushed for a complete 100% opening of the internal gas market by 2007. Further discussions in Lisbon and Barcelona were considered successes because of the relative quickness in arriving towards a common position.

The EP was then forwarded a second text with almost 200 footnotes. Decommissioning and waste were discussed in association with liberalization at the subnational level. However the EP declared that such major clauses would hamper transparency and the ability to institute regulation. The only other contentious issue was the extent of regulation. German rapporteur Mombaur of the EP's Committee on Industry, Research and Energy was clear in outlining that effective regulation would prove beneficial to both consumers and gas companies. The EP voted upon and passed Directive 2003/55/EC on June 26th, 2003.

## **4.5 German Delegation**

### **4.5.1 Implementing Directive 98/30/EC**

At the EU level, Germany, Europe's second largest gas market, appeared to be the least problematic of the member states to be integrated into an open gas market, as the German delegation acceded to 100% market opening in 1998. Along with Great Britain, Germany was used by the Commission as a model case of liberalization in an open gas market. However at the EU level, the German delegation was promoting the interests of the largest German gas companies, namely

Ruhrgas. Early on Germany chose the negotiated option, proscribing the Kartellamt's regulatory authority, allowing instead for four parties, two representing industries BWG, Bundesverband der deutschen Gas- und Wasserwirtschaft and VKU Verband kommunaler Unternehmen e.V., and two representing consumers BDI Bundesverband der deutschen Industrie e.V. and VIK Verband der industriellen Energie- und Kraftwirtschaft e.V. to regulate market opening, exemplary of the corporative model. The Verbändevereinbarung was a yearly agreement produced between German producers and consumers and overseen by the German government due to the 1998 directive. The German government further highlighted laws that had already incorporated directive provisions, from anti-monopoly laws to TPA clauses.

Complaints had been brought against the German gas industry by large consumers and gas distributors claiming cases of discrimination, irreconcilable price differences and indefensible denials of access to gas grids. The German government also already had a case brought to the ECJ regarding the end of its demarcation clauses in the energy clause dating from the 1931 German energy law. Because France had not yet transposed the directive or opened its market, Germany began to consciously lag behind with the opening of its own market. The German delegation referred to a clause in the 1998 directive in which countries were bound to reciprocally open their markets to other member states.(Interview 10.06.2003) In 2000, the European Commission brought a case against Germany for failing to meet minimal market opening requirements of 20% by 2000 for large customers consuming over 25 million cubic meters, for not splitting gas companies into transporter and distributor entities, and for not having transposed the directive into national law. The Commission further denied the German government's assertion that the most important sections of the directive had been established through the Verbändevereinbarung fortifying the conditions of a completely open market.(Interview 27.05.2003) The German delegation in Brussels began to defend its position by claiming that a 'fair-playing field' did not exist, whereby endangering the German market if it were to open its market without reciprocal action by France.(Interview 2.5.2003) In 2000 the German government sent a version of the new gas law to the Bundestag which was not ratified until 2002.

There were a number of mergers on the domestic German market which DG Tren cited as examples of market domination and indicators of anti-competitive behavior. Foremost was the aggressive attempt by E.on in acquiring Ruhrgas. E.on had already been created through a fusion in 2000 between VIAG and VEGA turning it into Europe's largest integrated energy concern. The merger between both companies would require permission from the Commission and highlighted differences between the Commission and the German delegation in Brussels. DG Comp found that an eventual merger would reduce competition on the European market.(Interview 15.10.2002) However German energy minister Werner Müller had given his approval to the merger, exercising a privilege contained in the German constitution giving a German minister the authority to override decisions by the Bundeskartellamt.

During the implementation phase of Directive 98/30/EC the German delegation demanded reciprocity from France and pressed for a negotiated system whilst keen in protecting its gas market from foreign competition. By 2000 Germany along with Luxemburg, Belgium and France had not transposed the directive into national legislation. The Commission, embracing more technocratic tendencies, contracted a benchmarking report that outlined France and Germany as having witnessed the lowest level of market opening. At the most, 5% of large customers had changed their supplier.(DBI 2000) Negotiated oversight authority did not function properly in Germany. The market was inhibited by pancaking and horizontal transmission companies. Germany, one of the initial states promoting liberalization proved to be a laggard and adamantly opposed to EU oversight. The EU encountered difficulties in reprimanding Germany as the corporatist nature of German political system removed culpability from the government's hands. There was a vacuum of responsibility where no one actor or organization could be reprimanded for having prohibited market opening and that its market actors portrayed the double talk of lobbyists more than directly responsible discussion partners. The last defiant stance against opening of the gas market was displayed at the 2001 EU Barcelona summit of ministers, at which France and Germany agreed to set a date for liberalization. Chirac and Schröder supported commitments towards

liberalization timetables but said that the dates for liberalization would take longer than wished by the Commission. This was accepted by the EU, because of German and French elections occurring in 2002. By 2000 swaying Germany to transpose and implement the 1998 was overshadowed by the construction of the 2003 directive with quantitative and qualitative measures that would force compliance.(Frankfurter Allgemeine 24.3.2001)

#### **4.5.2 Negotiating Directive 2003/55/EC**

During the negotiation phase the German delegation was forced to accept the quantitative and qualitative guidelines imbued in the 1998 directive and accede to the clauses negotiated for the 2003 directive - thereby curbing the tight representation of the gas industries' interests in Brussels by the German government.

The German representation displayed three interests during the negotiation of the 2003 directive: First, it looked to France as its main competitor in the gas market. GDF had begun to enter the German market without the reciprocal entrance of German gas companies in France. The German government was weary of opening its market to GDF and wanted its TPA requirements to not exceed the French level of third-party access. Second, it wanted an industrial environment creating national champions into European players, therefore continually pressing for negotiated access. Third, it wanted to protect its national market by stalling for a common position within the working groups for as long as possible.

The German position was marked by a protection of domestic industries more than an interests in lowering gas prices. The German position during the negotiation of the 2003 directive can be best understood as pressing for the comparative advantages of its largest gas companies, not on a national basis but one promoting the German gas industry in Europe. Although fitting well with Loyola de Palacio's vision of a market dominated by a few key players, German interests did not allow for the entrance for other players. Due to Schroeder's pro-industry policies promoting large companies, the German position was in line with the strategies of the large transporters wishing to protect their monopolies. American energy companies such as Enron were viewed with admiration by the German ministry of energy as models



for aggressive acquisitions on the European market. In a large integrated European market, only large companies have been thought to internationally reach the economies-of-scale. The German representation had taken a stance in protecting its key gas industries, despite continually rising costs, which were 20% over the EU average. Only 20 large industrial consumers had changed their suppliers, and many of the new gas companies had disappeared.(Frankfurter Allgemeine 15.10.2002)

The German secondary negotiatory prerogatives were security of supply, environment protection and business profitability. Fortunately these items were compatible with the Commission's wishes to see a few large companies offering a stable gas market. Germany was the member state most adamantly opposed to a regulator. An independent and overriding regulator posed no immediate threat to German interests, but rather to the corporatist model in which the federal government identified significant interest groups to form economic policy. The German position was that the Germany gas industry was better equipped to plan for a competitive market than one regulated by the government. Germany finally agreed to appoint the Bundeskartellamt as national regulator, rather than create a new independent body. In addition the German delegation believed that legal unbundling should be implemented only when necessary, stating that the ordering of the energy market to be a national issue. It appeared confounding that although the Middelstand represents the largest proportion of economic activity, the German delegation promoted the interests of the five largest gas companies over large gas consumers or of smaller gas companies. Member of the Monopolkommission, Winfried Haastert stated that Germany explicitly wanted national-players to dominate transportation from outside the EU, even at the expense of national and regional companies and local prices.(Frankfurter Allgemeine 2. July 2002)

#### **4.6 German Gas Industry**

Due to the liberalization of the gas industry, during the 1998- 2003 it became increasingly more efficient for the German gas industry to compete aggressively in the international gas market in order to promote its interests instead of relying on close policy cooperation with the German government in Brussels. The German gas

industry has in general attempted to retain the structure and pricing of its market, to protect its storage facilities and to avoid regulation, and has limited new gas companies from accessing the national gas grid. Even though as of 2002 there were approximately 711 gas companies (5 large international gas transporters, 17 long-distance national distributors, the 687 local Stadtwerke) operating in Germany, the German gas market policies are marked by few major European-level gas companies, mostly the 5 large long-distance transporters, leading to an oligopolistic situation.(BGW 2000) The small number of European-wide companies is partly due to technical reasons as gas is an expensive energy to supply, more costly to transport than electricity. Airtight pipelines must be placed underground whilst high pressures are maintained. The time and capital required to build pipelines is a barrier to new companies interested in exploiting the transportation possibilities offered by the transportation directive. Monopolist outpricing are not barriers to market entry as much as access to the transportation net. In addition the fragmented nature of the German gas market renders transportation through various regions prohibitively expensive under the Verbändevereinbarung agreements. The German market has a very tight oligopoly of foreign suppliers from Russia, the Netherlands, Norway and Algeria, which are under state influence or state-owned. Because there is no spot market, gas companies have become accustomed to working cooperatively and developing alliances that are difficult to penetrate. Internationally the German gas market is marked by its dependence on Russian gas which lies outside of the political reach of the EU. Lastly, German companies keenly protect their pipelines which are positioned at the crossroads of major trans-European pipelines.

There 17 long-distance high-pressure transporters of gas. There are also gas extractors, yet liberalization is of most importance to the five major distributors: Wingas, BEB, RWE, VNG, Thyssengas and Ruhrgas-E.on. Of these five, Ruhrgas has approximately 60% of the German gas market and is the company most unenthusiastic to liberalization.(La Tribune 7.2002) Therefore it is not unimaginable that Ruhrgas waxes the strongest influence on the national energy policy of Germany.

At the EU level there are few companies out of the more than 700 German gas companies with representation and influence. Ruhrgas, Wingas and Thyssengas

have offices in Brussels along with RWE and E.on. Long-distance trading brings corporate strategy to the EU level where companies with pan-European ambitions attempt to affect the legislative process. The Commission tends to not speak with the gas companies, preferring to attain a modicum of transparency.(Interview 9.6.2003) Therefore the largest gas companies have the opportunity to make their opinions known to the EU either through formal EP discussions or gas conferences arranged by DG Tren. Although the largest German gas companies are located in Brussels, the German corporative system has made it more efficient for companies such as Ruhrgas to form the political agenda with the Ministry of Economy and Employment (BMWA) in Berlin.

The negotiated access method under the 1998 directive made it less appealing for foreign gas companies standing outside the corporative Verbändevereinbarung arrangement to attempt to enter the German market. (Interview 28.05.2003) At the same time gas consumption grew considerably in Germany. The German market became more complex and long-distance transporters became worried about smaller margins. Because gas and oil prices became decoupled, gas and oil became competitively priced against each other. Coal and nuclear electrical cogeneration became increasingly replaced by gas. In addition, most new homes in Germany were built to consume gas. Promoting growth in the gas sector, the German government was thought as micro-managing Ruhrgas into a national champion at the expense of the Mittelstand and other gas companies.

The first of the three most notable changes were anchored in the creation of larger conglomerates. Electricity companies VEBA and VIAG merged in 2000 to create the largest integrated energy company in Europe, E.on, which in turn completely acquired the largest German gas company, Ruhrgas, in 2002. The other large German gas companies took this as a tacit signal that they would be able to continue to fuse and expand. RWE and Thyssengas entered into the business of acquiring smaller communal gas concerns. According to the DG Comp, such mergers curbed liberalization efforts as German gas prices rose, and the complexity of the Germany gas system furnished by few large transporters worsened.(Interview 15.10.2002)

Second, the long-distance sector of the German gas industry internationalized its portfolios and partnerships. Schröder's government had been keen in developing a global rather than a domestic energy policy for the German market. Enron was seen not only as a new comer and a force for competition but also as a business model for other gas companies in the new Europe. However Enron's demise signaled that security of supply, low prices and transparency were more important than pushing for liberalization at any cost. The overall strategies of the German gas market were marked by its position as a net-gas importer. German market's supplies were dependent on access to Russian fields and only large companies can access them. It is important to remember that there are different transportation systems, gas qualities, and pressures ranges in the German market. Only large companies have the technical capacity and capital to maintain long-distance transportation nets. Ruhrgas itself considered import and export as two markets requiring differing strategies and technical capacities.(Interview 2.6.2003) Since the seventies, German gas companies have worked to establish direct pipelines to the largest export market, Russia and Gazprom. Ruhrgas saw its position of international growth threatened by the lack of reciprocity with France and the purchase by GDF of German local utility companies.

Unlike Ruhrgas, Wingas as well as VNG were very positive to the first directive, believing that large customers would benefit from increased international competition. Wingas sought alliances with British companies and along with Ruhrgas considered linking its supplies to Norwegian gas fields. BASF had already in 1991 entered into partnership with Gazprom to create Wingas. VNG and Ruhrgas had established partnerships with Gazprom. RWE had also acquired the British energy company Innogy.

Lastly unlike the middle and small gas companies, the large gas transporters had been more self-reliant. Depending less on the German government and interest groups, the largest five gas companies have themselves promoted their strategies through offices and contacts in Brussels and other European governments and companies. Large companies such as Ruhrgas became formally invited to make their opinions known through politically independent EU meetings known as the Madrid conferences. Traditionally strong interest groups of the corporative system such as

BWG exert more influence through Berlin than in Brussels. BWG's Brussels office is rarely staffed and is only one of hundreds of lobbyist organizations. The EU itself has fewer tools to control private gas companies as there exist over 700 in Germany. German energy prices, especially electricity prices, had still been considerably higher than the EU average. The EU does not believe that prices will be necessarily driven down without the correct regulation of few key companies.

## **4.7 French Delegation**

### **4.7.1 Implementing Directive 98/30/EC**

The French government was attempting to retain all of the trappings of state-dirigisme in Brussels during the implementation of the 1998 directive. The initial French position can be understood as a strict protection of public service commitments, a stalling of GDF's privatization in order for it to compete on the European market, and a desire to maintain France's gas infrastructure which is nationally lauded for its low price and high level of public service. Under the rubric of public service lie issues of security of supply, affordable pricing, universal access, and control over basic national infrastructure. In order to balance the national budget, the French government has been moving beyond its instinctive policy of public ownership and expanding public services to citizens. Public service obligations are only generally spelt out in the constitution of the Fifth Republic. French public service obligations in terms of gas service ensure that gas service is not cut to clients who are not able to pay, that the price of gas is equal to all French citizens, that GDF is required to furnish service to all citizens regardless of distance from transport lines, and that when necessary, the government can conclude supply conditions for customers not able to pay.(Interview 6.6.2009) The French position is generally dependent on the political parties in office along the nature of national election debates - more so than that of the corresponding German position. Implementing the changes demanded by the 1998 and 2003 directives required major institutional changes to the French system. These changes affected not just the activities of industrial concerns; also the social obligations of the government must be reassessed - requiring a revision of public service and the operation of GDF as a public enterprise.

The French delegation in Brussels explained that the delays in transposing the directives were rooted in a national discussion regarding the privatization of GDF. Liberalization and privatization were considered a natural complement to liberalization, thereby affecting the government's ability to ensure GDF's obligation to public service. The Commission made it clear that it did not care how liberalization was achieved, as long as it was achieved, with or without the privatization of GDF.(Interview 27.10.2002) The French government was also concerned about long-term investments needed for large and expensive infrastructure projects. Changing the purchase of gas by large gas companies from gas exploration companies to a spot-price market instead of long-term contracts would make it less interesting for large companies to invest in pipelines. The French representation was explicit in portraying this as a public service concern. In addition the government did not want to repeat the experience of Juppé in 1995 who attempted to alter the structure of company ownership of the public service companies, provoking long and extended national strikes.(European Economic Report 6.9.1995) Meeting the 20% market-opening demanded a different qualitative transformation in France in opposition to other member states, because its power generation plants were nuclear-powered and changing customers would have to appear from the industrial sector.

Like Germany, the Commission brought a case to the ECJ against France for not transposing the law and for not meeting both qualitative and quantitative measures. The threat of an ECJ trial ignited the parliamentary deliberative process in France regarding transposition of the 1998 directive. For French Prime Minister Lionel Jospin, it was important to maintain political domestic stability while being able to show the Commission that France was capable of following through on its promises. Italy and Spain also brought TPA complaints against France. Spain had already refused Electricité de France access to the Spanish market, claiming that reciprocal TPA was impossible due to a transposition delay by the French government of the 1996 electricity directive. In regards to gas, Spain claimed that the delay in transposing the 1998 directive forced Spain to rely on expensive LNG shipments instead of being able to exploit trans-Pyrenees pipelines. France was touted representing a core EU nation, but at the same time setting a bad example by being

the worst offender of directive transposition due to its insistence on defending public services. The postal, the telecom and the railway directives were also delayed, however by 2000 the French government was beginning to show an interest in exploiting the new possibilities offered through an open market, and that each privatization should be understood in its particularity, not as a dismantling of the legal concept public service. The directive was finally transposed into French law in December 2003.

#### **4.7.2 Negotiating Directive 2003/55/EC**

During the negotiation of the 2003 directive, state-dirigisme could no longer define the relationship between the French government and GDF in Brussels. The changing stance of France's acceptance of liberalization of the gas market at the supranational level can be thought of a result of the new prime minister Pierre Raffarin's neo-liberal philosophy, along with the appearance of a new energy minister, Nicole Lafontaine, who had formerly been president of the EP, and the explicit desire of GDF president Gadonneix of turning GDF into a private company independent of public control. The French government had, especially under the socialist governments, been selling off state enterprises to balance its state budget. In light of not defaulting on the EU stability pact, the selling of GDF seeming to be a reasonable option in sustaining public sector infrastructures. The notion of increasing effectiveness in the public sector gained currency under Chirac's rightwing government. French businesses had become more aggressive in international markets. Cross-boarder competition in the gas and electricity markets reached 250 billion Euros in 2002.(Financial Times March 14, 2002) Amalgamating liberalization and privatization proved untenable domestically. By 2002 it seemed that the only group against privatization was French unions, particularly CGT, Confederation General du Travail.

At the Stockholm summit in 2001 and the Barcelona summit in March 2002, Chirac made it clear that public service was a key concept in French politics.(Frankfurter Allgemeine 15.08.2002) The total opening of the market of gas and electricity could affect small customers thus the government's stance was against

a complete opening of the market. At the Barcelona summit in 2000, the French government was the only government against liberalization. Succumbing to pressure, Chirac defended large public infrastructures such as SNCF and EDF against the British model. He also highlighted the demise of Enron, and electricity blackouts in the United States and the European continent as recurrent troubles due to liberalization policy in energy markets.

In covering public debt, the French government began to prioritize international growth over promoting the protection of its domestic market. The French government also had to please industrial gas consumers who did want a liberalized gas market. Even GDF had voluntarily followed the 1998 directive's provisions and opened 20% of its market to competition. In 1999 Jospin's government proposed a transposition of the 1998 directive which never reached parliamentary procedure. It had become slowly apparent to France that it could not avoid Brussels' liberalization policies, and had actually much to gain in a large European market and meeting the growing power of the German gas market

In negotiating the 2003 directive, France preferred that the Commission be present in monitoring derogations instead of exercising an EU-wide monitoring authority. Unsurprisingly in discussions regarding take-or-pay clauses, France asked that old contracts be viewed differently than new contracts. In 2001, France decided to prepare a text transposing the 1998 directive at the national level without informing Brussels of its intentions, hoping to meet the deadline as the ECJ required 18 months to examine the dossier. The ECJ tended to look unfavorably on transposition delays and found public service arguments unacceptable. France did not want complaints regarding its inability to transpose the 1998 directive to weaken its position in the negotiations of the 2003 directive. The French delegation realized that it would have to agree to a less than satisfactory solution.

A breakthrough at the Barcelona summit of March 2002, Nicole Fontaine at her first ministerial EU meeting stated in opposition to prior French policy that France was to agree to a total opening of its transportation and distribution markets - if the conditions were positive. However she did not offer a conclusive date, deciding to leave it to national debates. Fontaine said that if prices did not rise after the first



phase of liberalization she would be in a position to discuss quantitative measures. She also said that labor issues were not a commensurate worry, better discussed at the national level. At the same time she emphasized the exceptionality of public services as an extension of French culture. Therefore France needed time to change its culture of public service which was embedded in French laws and contracts. However the new economically liberal government represented the only EU member state completely against complete market opening at the 2003 Barcelona conference. France gave in only with certain clauses protecting the principles of public service allowing the government to designate a supplier of last resort. Fontaine also demanded clauses ensuring both supply and controlled tariffs, along with a legal unbundling only covering separation of accounting. Finally in 2003 France acceded to 100% market opening and all the contents of the directive proposal for 2003/55/EC.(Le Monde 7.10.2002)

#### **4.8 French gas market**

The 1998-2003 period brought tremendous change to GDF's position as a public organization under the representation of the French government at the European level. GDF had in the 1998-2003 period transformed itself into a growing international gas company in order to cope with increasing competition and opportunities on the European market with ambitions of privatization and a move towards independent representation of its policies in Brussels. Initially GDF was negative to the 1998 directive, believing that it would endanger security of supply and long-term investments. France has almost no gas-fired electricity plants. GDF's European ambitions were represented in tandem with French governmental policy in Brussels. The government emphasized that GDF was an issue of national resources and that liberalization policies would endanger GDF public duty. GDF itself was worried about take-or-pay distributors being forced to pay for gas which was being rerouted from the supplier directly to end customers.(La Tribune 3.21.2002) However unlike the corporatist model there exists less flexibility in terms of business decisions as a public company.

France, Europe's fourth largest gas market, did not have strategic control of the largest European supplies from Europe. GDF would need to strengthen its links to the North Sea and the Russian pipelines, which questioned the efficacy of relations with the government. GDF began formulating independent stances towards EU policy when it became apparent that the European market could offer large possibilities outside the domestic market. GDF needed new sources of supply in order to sustain its internal market. In addition future competition would endanger its domestic monopoly. GDF saw its main competitor to be Ruhrgas and sought to counteract the strategies of German companies.

In 2000, although France had not transposed the directive, GDF sought to force the adoption of the directive. GDF CEO Gadonneix stated that GDF would respect the directive opening its national market by 20% to 150 clients having a consumption of 25 million m<sup>3</sup> of gas.(Le Monde March 16, 2000) It also abandoned its import monopoly. It wanted to continue its transporting activities. Even more important was exploiting gas production and services. Gadonneix hoped to fund its need for at least one billion euros through a merger with EDF. GDF new ambitions lied in becoming an independent private enterprise allowing the state define the technical role and aspects of public service obligations.

By implementing key features of the 1998 directive of unbundling and TPA on its own initiative, GDF lost 15% of its domestic market. GDF, in opposition to the French government, became therefore less interested in public service discussions arguing that the government transpose the directive as soon as possible. Loses experienced on the domestic market were balanced by international activity. In 2002 GDF bought 49% of the Slovakian SPP for 2.7 billion dollars, which GDF largest investment ever.(Le Monde 3.21.2002) The most import long-distance pipelines lie in Slovakia where both Ruhrgas and GDF compete ownership and development. During the 2001-2004 period GDF acquired approximately 21% of Texaco's exploration licenses in the British North Sea.(GDF 2001b) Statoil and GDF also discussed the possibility of exploiting the possibilities offered by the NORFRA pipeline, the first direct connection between the Norwegian North Sea and France. The lack of directive transposition hampered GDF's ability exploit the Spanish

market as the Spanish government refused to open its northern border without commensurate reciprocity.

Gadonneix, CEO of the third largest European gas company, stated that he wanted to double GDF's size by 2005 and that it would search for partners.(Le Monde 16.3.2000) This required reworking Gaz de France's legal standing as a universal supplier of gas since 1946. In order to see itself as a European-wide company, it considered becoming either a multi-energy enterprise or working with EDF or TotalFinaElf. The government realized that it must allow GDF to also grow as a partially-privatized concern thereby ending the mode of state-dirigisme control.

#### **4.9 Regions**

Counter to an ideal MLG paradigm in which all three levels are present in negotiations at the supranational level, regions play a diminishing role at the supranational level. The EU's vision sways towards that of a market dominated by large companies and not by small fragmented markets. In this new constellation of powers, regional interests and influences in the gas market are increasingly minor if already non-existent. Article 265 of the Nice Treaty, states that the Committee of the Regions is not bound by any rules of engagement in the policy formation policy at the EU level. The Committee of the Regions may at the most, issue opinions at will, because there exists no institutionalized mechanisms in legislatively incorporating the Committee. The regions do not have direct influence in the Commission, they relate to old partners, namely their national governments through national legislative procedures. In addition regions have little competency in matters of the gas market. The minor influence once possessed by regions has been absorbed by interest groups and gas companies. The French regions have an unclear relationship with the national government as French regions were established in the 1980's to fill seats in the Committee of the Regions. French regions also do not have any competencies in energy matters. The German Länder also do not attain the same institutional role at the EU level as through the Bundesrat at the national level.

The 1998 directive was of little importance to regions as it affected only the largest companies and long distance transport lines. Regions had little influence over

the formation of the 2003 directive as they were not formally integrated into the discussions at the Madrid conferences and produced no common opinion through the Committee of the Regions. The Committee found that the directive's clauses were too technical to merit discussion. Both French and German communes, which are actually responsible for gas policy, had no ability to enter into deliberations regarding the 2003 directive.

#### **4.10 Interest Groups**

The gas industry is contacted by working groups of the Commission before drafting appropriate legislation. Interest groups are more influential than regions because they have superior institutional authority over the regions in terms of closeness to policy-making in the energy sector. Only in rare cases can interest groups present their opinions to open sessions of the EP or the working groups under the auspices of DG Tren. The Commission has established a formal method through which integral third party of the gas market may influence the liberalization process. Designated as a forum for discussion, a conference of gas market interest groups named the Madrid forum meets formally twice a year. The Commission sees it as a compliment to its own work. Participants convey technical and specific information. Under no circumstance are the forum's discussion equal in influence to negotiations conducted within EU bodies. The most influential participants of the Madrid Forum, Eurogas, Gas Transmission Europe (GTE), Cogen and Efet represent the gas industry and European regulators. These discussions are the most effective method for third parties to form an opinion presentable to the EU for consideration.

GTE itself represents the largest transporters of gas. Eurogas represents the entire industry with GDF CEO its president. GTE itself was the most adamant interest group against the 2003 directive, believing that the industry would be hampered by central planning and regulation. It pushed for a negotiated and regulated access clause instead of a purely regulated option. GTE furthered complained that it was not given the opportunity to present its opinions to the first EP reading.(GTE 02SD126- Final) It also believed that gas and electricity should be treated separately and did believe that security of supply to be an important issue.

Eurogas had a more positive position towards the 2003 directive. At the same time Eurogas believed that a legal framework was important, preferring to collaborate with the EU through the Madrid forum. It also urged against excessive regulation.(Eurogas Annual Report 2002-2003; Interview Eurogas 21.02.2003) Gas interest groups affect the gas policy area at the supranational level because they possess specialized industry knowledge that are periodically requested by the EU Commission.

#### **4.11 Analysis of Independent Variables**

The choice of sector dynamics at the EU level over gas policy from 1998 to 2003 had been that of overt liberalization. Deregulation and regulation had been partial issues. Privatization was not a matter mentioned at the supranational level. In terms of EU gas liberalization policy, institutional transformation between the gas industries and governments of France and Germany had also never been an explicit issue. The 1998 and 2003 directives had been rather aimed at affecting organizational transformations on how the gas industry as a whole should function in order to cause liberalization.

**Reductionism:** Key actors have been partially responsible for implementation or negotiation of liberalization directives at the supranational level. The positions of Loyala de Palacio, Gerhard Schröder, Jacque Chirac, French and German gas ministers', along with the positions of energy company CEO have clearly guided the transformations between how governments and energy companies related to each other in 1998 as opposed to 2003.

**Transaction Costs:** Increasing transaction costs brought by the implementation and the negotiation of both liberalization directives made it functionally impossible for the French and German delegates to continue representing the interests of their largest national gas companies. The EU had simply become too powerful in its ability to gather information, influence legislation formation and push through court proceedings at the ECJ. Also, the liberalization of the gas market made the transaction cost of gas companies in colluding with national representatives in

Brussels far too great, simply rendering competition on the gas market more lucrative.

**Property Rights:** Property rights transformations simply did not occur at the European level, as privatization was not attached to liberalization policies.

#### **4.12 Conclusion**

In this chapter I have discussed the implementation of gas directive 98/30/EC and the negotiations on gas directive 2003/55/EC in regards to the institutional changes between the gas industry and the governments of France and Germany at the supranational level. As presented in this chapter's introduction, my general research findings were that initially the governments of France and Germany were still bound to the respective formal structural arrangements of state-dirigisme and corporatism in terms of how they conducted policy relations at the EU level. However companies of the gas market were disengaging themselves from traditional relationships with their governments in Brussels in order to pursue competitive opportunities offered through gas market liberalization through international business strategies. The MLG perspective itself has uncovered lacking subnational involvement, whilst the supranational bodies of the EU have clearly waxed their authority over gas market liberalization policies.

In sum, the liberalization of the EU gas market has caused institutional change to German corporatism and French state-dirigisme at the supranational level. I attribute this institutional change mostly to the strong presence of EU bodies over the initiatives of French and German gas companies and national governmental representatives in the formation and implementation of liberalization policies. First, I found that key entrepreneurs of the gas industry and national governments have initiated institutional change by taking policy positions untraditional to both corporatism and state-dirigisme. Second, transaction costs may be simply understood as formally originating in the 1998 and 2003 causing informal negotiatory transaction costs breaking down how governments and gas companies traditionally related to each other. Third, the liberalization of the European market created large lucrative opportunities for gas companies willing to explore their competitive advantages. As

discussed in 4.2, Framework, the new supranational system can be understood as reflecting the momentary policy initiatives of the EU through its superior institutional capacity.

## Chapter 5 National Level

### 5.1 Presentation

In this chapter I discuss the forces behind institutional change at the national level. My general finding is that because not all parties in France and Germany have been positive to the 1998 and 2003 gas directives, institutional change in the form of *regulated neo-liberalization* has occurred at the national level, thereby signaling a transformation of corporatism and state-dirigisme at the national level. In France, GDF was the major national force positive to liberalization. GDF's interest in decoupling itself from the national government control signaled the end of their state-dirigiste relationship. In Germany the failure of the *Verbändevereinbarung* system simply made the corporatism system no longer tenable.

In this chapter I begin by discussing what I term *regulated neo-liberalism*. I continue by discussing the impact of directives 98/30/EC and 2003/55/EC in France and Germany. Regarding France, I discuss French energy law of January 4<sup>th</sup> 2003 transposing directive 98/30/EC and most provisions of directive 2003/55/EC. After a brief discussion of public service and privatization as a background, following my reductionist variable, I present the following actors as key to the creation of the national French gas policy: Prime Ministers Jospin and Raffarin, Energy Ministers Dominique Pierret and Nicole Fontaine, the General Assembly, the Senate, French gas operators namely GDF and interest groups namely CGT.

Germany produced the energy law of May 24<sup>th</sup> 2003 as a result of EU directive 98/30/EC. Prior to presenting the impact of key actors, I begin with a background of key issues in Germany, namely TPA and regulation. The actors in German gas policy are: the BGW, VKU, BDI and VIK interest groups; BMWA ministers Werner Müller and Wolfgang Clement; the Bundestag; the Bundesrat; major gas companies, namely Ruhrgas and Wingas; the Bundeskartellamt; and the Monopolkommission. I end this chapter with a brief conclusion.



## 5.2 Introduction

Neo-liberalist theory posits that government involvement in the industrial sector hampers domestic industrial policy; therefore businesses should be allowed enough self-regulation to stimulate economic growth. According to neo-liberalist theory, the private sector is better positioned to direct economic growth than governmental planners. However as only in an anarchical situation are economies void of governmental interference, extended neo-liberalism never removes governmental involvement in economic matters. No industrial society could function without a working energy supply and this has reached common agreement in the EU.

The direction of economic neo-liberalism that I have found at the national level is based on a modicum of regulation over gas companies, which I term *regulated neo-liberalism*. Gas companies are allowed to exercise their business strategies as long as they do not transcend the legal provisions contained in national gas laws transposing directives 98/30EC and 2003/55EC. The most apparent attributes of this form of regulated neo-liberalism is the privatization of gas companies in tandem with the appointment of independent and strong energy regulators. In France there is a movement in which GDF and the state are defining reasons for partial privatization of GDF. At the same time the national government has appointed CRE the national gas regulator. In Germany the *Verbändevereinbarungen* is being dismantled along with the creation of a national energy market regulator.

At the national level, as at the supranational level, I found a general breakdown of dirigisme in France and corporatism in Germany in favor of a regulated neo-liberalist gas market. Although the government have negligible control over the overall planning of gas companies' strategies, national governments still define and conduct the terms of regulation and technical and social standards. This is being progressed through the establishment of national regulators, oversight by the EU Commission, in addition to storage requirements and unbundling.

## **5.3 France**

### **5.3.1 Background**

The issues of public service and privatization are the two issues that consistently dominate the liberalization process in France. Public service is espoused by both the right and left flanks of the French political spectrum. It has also been used as a reason to nationalize firms in the early 1980's especially those in the petroleum sector, banking and industrial sectors.(Schmidt:1992,1996a; Feigenbaum.1985) Public service is tied to the notion of basic civil protection embodied in the Declaration of the Rights of Man and Citizen from 1789. Public service has been used as a common theme by unions and left-leaning political parties during the nineties in order to delay the privatization of major state companies by stating that neo-liberal policies: would estrange French citizens from basic infrastructure, raise gas costs, lower quality of service and transfer control important industry to foreign interests. In the energy sector, public service is employed to control prices, maintain gas service for those who cannot pay, offer universal service and centralize infrastructure so that economies of scale can secure supply and distribution. (Secretariat de d'Etat et l'Industrie 1999)

Privatization has been a policy equally practiced by the left and the right flanks of the French political spectrum. The French governments of the 1990's and early 2000's has used the selling of lucrative enterprises in order to balance its budget, skirting the sensitive issue of public service obligations by characterizing such privatizations as necessary steps towards competitiveness. Privatization strategies in France do not always encompass complete privatizations. In many cases the French government still remains a considerable share-holder, if not at least maintaining majority ownership. The decreased competitiveness of French business during the nineties has propelled the government to switch strategies from that of nationalization of key companies in the early 1980's to the privatizations of the 1990's.(Schmidt;1996b) In 1982 public companies totaled six hundred concerns, two and a quarter million laborers, and represented a larger portion of the GDP than that of the comparative public sector in Germany.(Dumez;1994) Privatizations in the nineties were neither pressed by an explicit neo-liberal ideology nor a push by the

EU, but a sense that French firms were losing in the share of an open European market. In the case of GDF, liberalization has almost always denoted privatization. Although EU member states are not allowed to cover state budgetary weaknesses with privatization profits, member states may place privatization profits into national infrastructure and social programs. Since 1993 the French government has amassed sizeable profits from the selling of industrial and financial companies. The selling of private enterprises had already begun under Balladur government with the selling of BNP in 1993.

Public service obligations are not located in a specific statute but rather incorporated into the charters of public enterprises. Public service in the gas sector is rooted in the national French law 46-628 of April 8th 1946 regarding the nationalization of electricity and gas services. The law set to improving existing gas infrastructure and the building of new pipelines under the authority of GDF. Yet it does not explicitly mention universal coverage and public service. As a result several French communes are not connected to GDF's gas network. In addition many local gas companies do not espouse public service criteria.

### **5.3.2 Prime Minister**

Whilst the president is the embodiment of the constitution and the French state, the prime minister is the chief administrator of the government.(Baumgartner 1994) National energy policy lies within the competencies of the Prime Minister and his cabinet. The Prime Minister does not embroil himself in the specificities of gas policy. He does although set an agenda to be progressed by the Secretary of Economy, Finance and Industry and his delegated ministers. There have been two prime ministers during the 1998-2003 period: Lionel Jospin of the socialist party from 1997 to 2003, and Raffarin of the conservative UMP party whose office dates from 2002.

In 1998 Lionel Jospin began discussing the future of public service. He asked whether it was viable to sustain a service that was meant to respond to the lack of infrastructure during the post-war period. The conservatives asked whether the public sector was genuinely capable of ensuring public service for all citizens. Lionel

Jospin was strongly connected to the communist party and labor organizations. His decision-making capabilities were hampered by his need for their support. During his term as prime minister, the French government did not want to take a position regarding the 1998 liberalization directive until after the 1998 national elections. The socialist government did not want to create disagreement with the left-wing parties and aggravate crucial electoral support even though the selling of public companies was actually practiced more under the socialists than by their conservative predecessors. Lionel Jospin planned to privatize GDF along with EDF and TotalFinaElf, but was met with disagreement from the communist party. The reminders of the 1995 labor strikes placed the privatization of the GDF and EDF on a temporary halt.

In May 2001 Jospin along with Laurent Fabius, then minister of economy, finance and industry, attempted to convince the socialist party that changing the legal status of GDF was timely, all without specifically mentioning privatization. The ministry of energy prepared a text to be sent to the parliament containing changes to GDF's status as well as a transposition of the 1998 directive. However once again, Jospin's close ties to the communist party made a partial privatization of GDF tenuous. (Financial Times June 18 2002) In 2000, Jospin opened the gas market to the minimum threshold of 20%, without pressing for a transposition of the 1998 directive. Up to the 2002 elections, Lionel Jospin tried to stay away from privatization and renamed the privatization commission the Commission for Shareholdings and Transfers.

Raffarin ushered in a totally different economic policy as a conservative politician. He called for an invigoration of the French economy to commence with privatization in key industrial sectors. The conservatives dubbed privatization *opening of capital*. Chirac and especially Raffarin made it clear that the government would privatize many businesses in order to balance the budget, stimulate investment and meet the euro stability pact to counteract the 5% tax cut by Chirac. As the Communist party lost its key ally in the prime minister, the government could carry on privatizations estimated to gain €70bn planned through the selling of Thalys, Credit Lyonnais and Air France and GDF. EDF itself was estimated to be worth

€80bn.(Financial Times; 18.6.2002) The privatization of GDF was to still leave the government with at least a 51% majority stockholding. At the same time the French government was careful to ascertain that a different type of privatization would transpire distinct from British-style privatization strategies.

The Fondation Concorde, a group counseling Chirac, published a note in 2003 suggesting a merger between GDF and EDF, citing that this would not be in collusion with EU monopoly policy, while noting the lack of action of the EU in instances of similar mergers in other EU member states. Raffarin finally called for a progressive privatization of EDF and GDF in 2002.(Les Echos; 4.7.2002) Raffarin declared in July 2002 that he would prepare a package of privatization of public companies along with EDF and GDF. This action placed strain on the transposition of the 1998 directive leading to debilitating national strikes during the summer of 2003.

### **5.3.3 Minister of Energy**

The Ministry of Energy is a subministry of the Ministry of Economy, Finance and Industry. The ministers of energy have been Dominique Pierret under Dominique Strauss-Kahn and Nicole Fontaine under Francis Mer. Both Dominique Pierret and Nicole Fontaine have been positive towards the liberalization of the gas market. Dominique Pierret saw gas as priced not according to demand but to what energies it replaced. He did not view liberalization as denoting a rise in prices to consumers.(Senat project de loi no 358) Dominique Pierret was very pleased with the formation of the 1998 directive and hoped that it would ease inimical pressures towards partial privatization after initial market-opening. The ministry also wanted to demonstrate to the EU Commission that it could follow its political prerogatives while holding its political priorities in order. However Pierret's political interests were hemmed by the Jospin government's ties to labor unions.

Nicole Fontaine was a key figure in transposition of the 1998 directive, managing to bring both the right and left flanks in the French government to a common agreement. She guaranteed that universal service and public service would benefit from a liberalized market where each customer could be connected to the gas grid and receive quality service in clear contracts supported by the CGT union. The

CGT would receive governmental reports on the progress of market opening. Fontaine regretted that the 1998 directive had not been implemented. She underscored three points in parliamentary discussions: First, liberalization and public service obligations could coexist. Second, liberalization would allow EDF and GDF to expand internationally. Third, France needed to expand on all possible forms of energy to ensure future security of supply by reporting to the government on a yearly basis. She also made clear that the French state would not allow unhampered liberalization. Gas companies would be controlled for TPA, reasonable tariffs, derogations, and accounting separation. (Sénat discussions, 8 October 2002)

Both ministers of energy pressed for a competent commission of regulation of energy. The CRE was created in 2000 to counteract arguments that liberalization would dismantle public service obligations in the electricity market. Its authority was extended to the gas market under French law in 2003-8. The CRE ensures: TPA, oversees unbundling, looks for instances of market abuse, proposes tariffs for ineligible customers, consults on the building of transport lines, and helps the French gas industry prepare itself for international consultations. Fontaine Nicole also stated that privatization discussions would be left for later dates in order to push for the transposition of the 1998 directive into French law before action by the ECJ.(Assemblée Nationale 2002) Privatization was also made difficult with a conflict regarding pension reform and strikes by the CGT, therefore Fontaine held back privatization discussions until 2004.

#### **5.3.4 General Assembly**

The French Parliament is divided into two legislative bodies; the General Assembly and the Senate. The deputies of the General Assembly are elected directly and Senators are elected by their departments' legislatures. The General Assembly had early on been skeptical to unregulated TPA fearing that new companies could exploit new market capabilities and inflate gas prices.(Rouvière 1992) Deputies have also been weary of alienating themselves from key constituents by pushing for general market liberalization.

In 1999, the EU electricity directive sparked the first discussions regarding the modernization of public services in energy sector. The General Assembly published a report (CESX9900117V) with the Conseil Economique et Social stressing that in order for GDF to be able to develop properly in an EU market, it should be able to open its capital to EDF and TotalFinaElf. In 1999, the only party completely opposed to privatization of EDF and GDF was the Communist Party which had close ties with CGT. The socialists and the greens believed that public services were not endangered by privatization.

Gas rapporteur Francois-Michel Gonnot stated that France should not reorganize its energy market nor privatize GDF without secure regulation.(Gonnot 26 Nov 2002) The issue of regulation stemming from public service commitment concerns was covered through the enlarging the duties CRE, Commission de régulation de l'énergie, the national energy regulator into the gas sector.(Assemblée Générale 2003) The Parliament transposed the gas directive into French law on 19th December (Journal officiel January 4th 2003). The law implemented more provisions than outlined by the 1998 directive. First, the General Assembly was exact in pressing for a regulatory body that could ensure public service obligations. The electricity regulator created in 2000 would have almost the same competencies over the gas market. Second, conscious of the 2003 directive, legal separation and managerial distribution, with a discussion of storage were added to the law's text. Third, the law allowed industrial consumers consuming more than 25 million m<sup>3</sup> tons of gas or 20% of the market to choose suppliers. This amounted to 150 large industrial consumers. Fourth, the law demanded that new companies seeking access to the French market fulfill public service criteria based on the type of customers served. Fifth, companies were no longer required to ensure a minimum of 30% public funding. Sixth, companies were required to transparently publish TPA conditions. The law established that the Commission de Regulation de l'Energie receive the authority to set guideline tariffs. The Commission de Regulation de l'Energie would be able investigate transport quality but need not approve the building of new transport lines. It would be able request that TPA be made to

particular requests. Lastly, service to the impoverished, security of supply and service to small communes were reinforced.

Law 2003-8 also transposed most items of the 2003 directive. Only legal separation of transportation and further TPA need to be transposed. These issues were left for later legal negotiation. The 2003 law was more far reaching than wished by the Jospin government and the General Assembly itself. The more liberal version was influenced by both the Energy Ministry and the Senate.

### **5.3.5 Senate**

The Senate has been more positive to liberalization and privatization than the General Assembly. In France the delays to the first transposition of the electricity directive of 1997 were tied to a project outlining the modernization and the development of public services in electricity. This delay had vocalized the misgivings of industrial consumers. In 2000 a group of 7 senators and 7 deputies refused to consider a version of the energy laws defending public services.(Le Monde 19.01.2000) The senate was aware that EU law could reconfigure the state of the French energy market established in 1946. After the 1998 directive, the senate wanted a sole regulator for gas and electricity. The energy commission in the senate wanted to press for the adoption of the directive already in 1998. Article 50 of the finance law of 2 July 1998 would allow new companies to enter the market with less than 30% public funding.(Sénat 1998) In discussing the 2003 gas law, the senate was very clear in stating that electricity and gas must be understood as two different markets possessing two different technical requirements.(Révol, 2002) A regulator would regulate the gas market and develop competition. The senate was also clear in differentiating between real and theoretical market opening, by asking that the regulator ensure that TPA be achieved. The senate was careful in discussing take-or-pay and long-term contracts not wishing to experience energy crises in liberalized markets - thereby highlighting security of supply as a major issue. The senate demanded minimum storage requirements by raising minimum stock criteria from 90 to 120 days. (Courteau, Roland, Avis 75 Tome VI 2003-2004 commission affaires) Law No 3 of January 4th 2003 was made into a package law for both electricity and



gas and public service. It also placed the burden on the companies to convey progress reports on a yearly basis to the ministry.

### **5.3.6 French Gas Operators**

French gas consumption of total French energy consumption has increased from 5% in 1970 to 14,5%.(Gaz de France 2002) France produces 2% of its own gas mostly; from the Lacq site in the Pyrenees. Of imported gas; 30% is imported from Norway, 29% is imported from Russia, and 29% is imported from Algeria. The transport grid is 36,000 km of which 90% is owned by GDF and 10% is owned by Gaz du Sud Ouest. The French distribution grid is 170,000 km long. 96% of total distribution is performed by GDF and 4% by non-nationalized companies. Universal service is not a reality as 75% of French citizens are connected to gas. The other two large companies operating on the French market are GSO (Gaz Sud Ouest) and CFM (Compagnie Francaise du Methane). GSO was created in 1945 and supports 14 departments in Aquitaine. 70% of GSO is owned by Total and 30% by GDF. CFM was created in 1956 in order to exploit the Lacq gas field and operates in 25 French departements in the center of France. 55% of CFM is owned by GDF and 45 % by Total. (Poniantowski 2002) The French market is largely centered on GDF's supply capabilities. GDF is Europe's third largest gas company.

There exist 17 distributors of gas serving 174 communes. They have never been nationalized and do not have enough market capital necessary to enter new markets. In 1998-1999 GDF used 400 million Francs to serve 1200 new communes (Beson 1999). France was the only country to still grant concessions forbidden by the 2003 directive. Article 81 of the finance law of 2001 calculated prices of the lines of concession and GDF, GSO and SEAR placed bids for new lines. GDF was allowed 37 of 43 granted concessions in 2001.(DGEMP 2002) By 2003 GDF had lost 15% of the French gas market as standardized authorizations instead of concessions were made practice by the 2003 gas law. However important national supply contracts would still be authorized by the energy minister and communal supply contracts by prefectures.

As a nationalized company, GDF had in 2002 an executive board comprising of six representatives of the state, six GDF employees, and six gas industry experts. Other subgroups give their opinion to the GDF administration. The GDF president is named by governmental decree. The government periodically renews three-year contracts with GDF in which future strategy is outlined. Although not abandoning public service interests, GDF has been clearly interested in ending ties with the government by pressing for privatization and welcoming liberalization. Through its strategies of international expansion, voluntary market opening and a wish towards privatization, GDF has had little contact with the Ministry of Energy. GDF currently prefers to work with the government through the senate.(Interview 16.6.2003) In 2001 GDF concluded a three-year plan with the government concerning the need to acquire capital for acquisitions from 5 to 17 billion Francs. GDF was also allowed to run a debt and was given six instead of twelve months to adjust to international prices. GDF also intended on increasing customers at the national level - approximately 200,000 new customers every year.

The first electricity directive in 1996 allowed EDF to become a multi-energy company contemplating a merger with GDF. EDF pressured the socialist majority government in 2000 for transposition of directive 98/30/EC into French law. This pressure from either GDF or EDF had never before occurred. In 2000, GDF reached a net profit of €1.21 billion.(GDF 2000) It voluntarily opened its market to 20% or 25 million m<sup>3</sup> tons of gas. CEO Gadonneix stated that GDF intended to double its size by 2005 and that it would separate its transport and selling entities. In 2000, GDF bought 12 exploratory licenses in the British North Sea and in Egypt and reached its half-way goal of 15% in-house gas extraction by 2002. In Slovakia GDF worked with Gazprom to exploit the largest European gas nexus. GDF envisioned turning public customers into private clients.

Due to EU liberalization policy in the gas market GDF as a nationalized French company experienced public ownership as a handicap. First GDF viewed the liberalization transformations present in other EU member-states as harmful to its international competitive standing. Second, the French government's ownership of GDF hemmed expansionary strategies in a liberalized market. Third, because of the

dire financial French budget, GDF could not rely on the government as a secure loan guarantor. Fourth, Spain and Italy have denied both EDF and GDF entry into their markets on grounds of faulty reciprocity and advantageous public funding by the French state.(Interview 5.6.2003)

The 2003 directive allowed 500,000 French customers the opportunity to change suppliers, resulting in a loss of industrial customers, especially in Southwestern France. GDF was however adamantly against opening access to its storage facilities. It also did not want to allow access to transport lines which had not yet been amortized. Yet GDF could not afford dismissing large French industrials concerns that were positive to the market opening, even more so than their German counterparts. Four large industrial groups, Solvay, Saint-Gobain, Pechiney and Rhodia, accounting for 4% of the French market's consumption invited bids to supply of their 19 large French plants, hoping to lower their bills.(Financial Times 31.8.2000) Since 2001 five new large distributors appeared on the gas sector representing approximately 5%. The new NORFRA pipeline with a maximum capacity of 14 billion m<sup>3</sup> yearly represents the total French consumption and the first direct pipeline to a foreign source of gas. (Conseil régionale Nord-Pas de Calais 1998) Pierre Gadonneix stated that GDF would offer TPA unequivocally to all ambitious bids. He concurrently stated that GDF was considering a privatization in order to meet the new demands of large industrial concerns. GDF planned to borrow €1-2 bn in 2002 to fund international expansion and would have preferred to raise capital through the selling of shares on the stock market.(Financial Times August 31, 2000)

### **5.3.7 Interest Groups**

There also exist interest groups in France that discuss national economic issues with the government. However unlike their German counterparts, French interest groups represent employer and employee organizations discuss labor conditions rather than issues of industrial planning. GDF has 37,800 employees.(Interview 17.4.2003) The Confederation General du Travail, CGT represents 1,660,466 workers in the largest state-owned French companies. CGT has been adamant in protesting

against partial privatizations in both EDF and GDF. Yet even CGT has bowed to pressure in accepting changes in contract so that GDF and EDF may compete in a pan-European market.

In 1999, labor organizations negotiated a lowering of labor costs with the Ministry of Public Functions. CGT's connections with the government have been weakened because Raffarin unlike Jospin does not view labor groups as political allies. Moreover the public believed that that GDF's and EDF's union laborers have hammered on public service issues not because a desire to continue offering good service to French citizens', but to protect union jobs. In addition French citizens have largely viewed privatizations positively. CGT remains negative to the privatization of EDG and GDF. However CGT director David Cohen would like see a merger between both companies, allowing for broader investments.(CGT 2003)

## **5.4 Germany**

### **5.4.1 Background**

The decentralized federal nature of the German corporatist complex involves more actors and more political negotiations than in France. The German Minister of Industry and Labor, 1998 to 2002, Wolfgang Clement and his Deputy Energy Minister Georg Wilhelm Adomowitsch had less power in agenda-setting than their French counterparts. Due to the corporatist institutional structure, they were required to allow large companies to negotiate in the policy-making process. Public Service is not an issue in Germany as it is believed that the government provides for the welfare of the destitute through social programs and not through controlled energy prices. Privatization is also not an issue as the government has not been a share-holder in large energy companies. The important issues have been the negotiation of the TPA system and regulation. Gas prices have been a concern of consumers and not of the government. Overall governmental policy during the Schröder government has been rooted in stimulating the German economy more than in promoting social issues. The largest transformations have occurred in the breakup of the corporative decision-making apparatuses of the *Verbändevereinbarung* system and the creation of a national regulator in curbing companies' agenda-setting capabilities.

### **5.4.2 Interest groups**

The Verbändevereinbarung system or VV was an agreement between four key interest groups, two interest groups representing gas suppliers and two interest groups representing consumers. The suppliers were represented by the BGW, Bundesverband der deutschen Gas- und Wasserwirtschaft, an interest group representing German gas companies and VKU, Verband kommunaler Unternehmen e. V., interest group representing communal utility companies. Consumers were represented by BDI, Bundesverband der deutschen Industrie e. V., Union of the Germany Industry and VIK, Verband der industrieller Energie- und Kraftwirtschaft e. V., Union of Large energy consumers. The groups met under the direction of the BMWA, Ministry of Industry and Labor, in order to agree on national contractual terms for a given year. VVI and VVII were negotiated from 2001 to 2003. The VV system was to promote the efficiency and flexibility of the German corporative system instead of relying on directive transposition. However it did not function because negotiations were time consuming, parties did not agree easily and TPA was really not achieved through the VV model. Furthermore BGW risked its national position as it was never democratically legitimated to bear such a strong position on consumer prices.

The first Verbändevereinbarung required nine months of negotiations and was adopted in July 4 2000. The first Verbändevereinbarung, also known as VVI, offered TPA concepts and tariffs, standard connection conditions, storage access, hourly balancing prices, capacity management and methods to render different gas qualities compatible to each other. Each gas transport transaction was to be negotiated individually. At first, the consumer groups, VIK and BDI worried that liberalization would drive up prices. The supply groups, BGW and VKU worried that liberalization would lower prices. VVI entailed that the five large gas importers open their storage facilities by 30 June 2001. The weaknesses of VVI were apparent as only 3% of consumers or 20 companies changed their suppliers by 2003.(Le Monde, March 29, 2003) German consumers did not change suppliers easily and had little incentive to do so. Even though BGW stressed that the German market was

completely open to competition, the VVI agreement did little to ease the complications in concluding new TPA contracts. Germany was Europe's largest gas market and German gas and electricity prices remained amongst the highest in Europe, approximately 20% over the EU average.(Frankfurter Allgemeine 21.1.2002)

VVII was termed valid from October 1st 2002 to 30 September 2003. VVII was to present a transparent calculation of TPA costs and rules. Because regional and national tariffs levels were combined, it reduced pricing models from three to two. The transport pricing of long-distance gas was to be checked yearly and compared to the levels of international tariffs. In order to dissuade pancaking, a stamp price would be placed on transported gas from entrance to exit stations in the gas grid. Non-industry customers with large usage would be designated special tariffs under VVII.

VVI and VVII did not include all important terms of the 1998 directive; the specificities of the 2003 directive made future discussions unnecessary. With a case at the ECJ pursued by DG Comp against the German state, it became apparent that the Verbändevereinbarung system appeased the neither EU nor consumer groups - thereby sparking a movement towards regulation at the national level. Consumer groups contended that there existed really no substantial negotiations, as the large gas companies created their own gas prices immune to competitive prices, and that German electricity prices had actually increased after liberalization. Small electricity suppliers criticized the large electricity companies for the slow liberalization of the electricity market. The then Industry and Labor minister Werner Mueller threatened all VV partners with the creation of a super-regulator with authority over the entire energy market - even though it would be difficult for a regulator to compile all necessary information over Germany's complicated energy market. VVIII never came to fruition as its negotiations reached a stalemate after months of discussion leading to a regulated TPA system with a then future unspecified national regulator, most likely the Bundeskartellamt.

### **5.4.3 Minister of Industry and Labor**

The German Minister of Industry and Labor, BMWA, has long been dependent on reaching common agreements with large industrial concerns in terms of

national policy. BMWA cannot be seen as taking a stance inimical to industrial interests and opinions. Government control is seen as an intrusion to growth and innovation. The ministry has a goal of providing for a convivial business structure, allowing the energy sector to fuel the country's economy and offer a framework for development through internal market strategies in tandem with the industrial sector. Security of supply with a mixture of energy sources and allowing German gas companies to achieve the appropriate weight on the supply-buying market has traditionally been accepted practice as long as environmental concerns with renewable energies and energy-saving being included.

Werner Müller was the BMWA's politically non-affiliated minister who once worked for VEBA before it merged with VIAG in 2000 to create Eon. He was keen in ensuring that the VV system functioned by giving its participants many opportunities to conclude common agreements. He established *Task Force TPA*, a group aimed at settling negotiatory difficulties in VV negotiations by offering solutions and discussing insufficiencies with VV participants. Both Schröder and Müller were keen in prioritizing the presence of large industries over the *Mittelstand*, or middle-sized companies, at the European level. Müller believed that strong German companies would aid in lowering domestic unemployment. Before leaving his post, Müller approved a merger between Ruhrgas and Eon in 2002 revoking a prior decision by the Bundeskartellamt. The minister's approval is a distinctive feature of the German law not liked by the EU Commission, in which a minister may allow for a merger against the wishes of both the Bundeskartellamt and the Monopolkommission. The approval must be grounded in arguments that a large merger due to ministerial approval may in fact be positive for the national economy. This right had been exercised only six times in its forty-year existence.(Frankfurter Allgemeine 18.2.2002)

Werner Müller returned to work for Ruhrgas in October 2002 and was replaced by Wolfgang Clement of the Social Democratic Party. Wolfgang Clement wanted to strengthen the economy minister's authority to allow fusions even through the protestations of regional courts. Yet he also wanted to force TPA onto the gas industry following a similar position as Nicole Fontaine at the EU Barcelona summit

in 2002. Unlike Müller, Clement was critical of the German gas industry's insufficient implementation of the quantitative provisions of EU gas policy. He made it known that the VV system was time-consuming, based on too many short-term contracts and inefficient in concluding common agreements.(Pressemitteilung May 20th, 2003 BMWI) Because the VVIII discussions stalled in disagreement, BMWA developed basic elements of TPA and rules to be applied by the gas industry.(Interview 23.01.2004) The BMWA Task-Force was to discuss transparent practices, net access, and standardization of market rules which had not been made clear the VV system. Lastly, Clement believed in a reappearance of the VV system, but only with clear rules in place, a national regulatory body and a new comprehensive energy law appearing in 2004.(Interview 14.1.2003)

#### **5.4.4 Bundestag**

Delays in transposing the EU directive were largely due to a belief that the VV system could create a competitive environment without governmental regulation. A common position at the Bundestag was that competition was best ensured by private regulation and competition offered by a large number of energy companies.(Interview 23.01.2004) In addition members of the Bundestag initially explained that the German constitution promoted the sanctity of the legal state or *Rechtsstaat* over the common-law procedures of the EU.

The electricity directive was transposed in April 1998 as the *Gesetz über die Elektrizitäts- und Gasversorgung EnWG*. Gas was incorporated as an elementary fuel for electrical production. Gas companies were allowed self-regulation capabilities through *Guter Fachliche Praxis*, or good professional practices of prices, and TPA. However gas companies were to cede the technical inspection of storage facilities to the national government. The German representation in Brussels subsequently explained in discussions to DG Tren that the items of the 2000 gas directive were sufficiently covered by the 1998 law and the VV system.(Interview 15.10.2002) CDU Bundestag leader Hartmut Schärte sparked convergent options by stating that the government was badly positioning the economy in terms of competition and industrial structure.(CDU 2002) Allowing monopolies to set the national economic



agenda and dictate terms over medium-sized businesses known as the Mittelstand weakened the German possibility to react internationally. Placing importance on taxation did little to strengthen the German economy as outlined by the 1991 Standort Deutschland program in creating a competitive business environment.(Interview 27.5.2003)

The impulse in creating new German legislation regarding energy was not as vigorous as desired by the EU. There exists no German law guaranteeing universal service and prices may vary throughout Germany. The number of public servants is lower than in most EU member states and employees of energy companies are not given the right to strike. Therefore there exists little public servant pressure in reforming the German energy market. Legislative propositions are initiated at the appropriate ministries so that laws are agreeable to all governmental bodies - in this case BMWA. Only in December 2000 did BMWA finish a first draft of the new energy law which had to be sent to the Bundestag. The second draft, a revision of German law, or Nouvelle was written for both the electricity and gas markets and processed in May 2002. It was to bring in good technical expertise in opening the market further and nullified the Verbändevereinbarungen. However it was not ratified after lengthy and problematic negotiations at the Bundestag.

A new proposal was then introduced by the SPD and Bündis 90/Die Grünen in December 17th 2002. Both parties exclaimed that there was not enough competition in the gas sector and that legal action by the ECJ demanded immediate transposition. The proposal was a reworking of the earlier electricity law of 1998. All regulation in the electricity sector would also apply to the gas sector in order to regulate discrimination of TPA. Good business practices became the rules and the standard of regulating tariff calculations. Quantitative technical specifications were also added. The publishing of information was made requisite. The regulation of access to storage and nets was to be enforced. It also made medium suppliers responsible for TPA between the long-distance suppliers and consumers. Tariffs were to be published on companies' websites and universally accessible. It also gave BMWA the power to examine and curb instances of bad TPA. However the directive did not affect the distribution nets. It also left many items open to individual contracts. The

law was adopted on the 24th of May 2003 and left the important items of the 2003 directive to later comprehensive legislative action.

#### **5.4.5 Bundesrat**

Unlike the Committee of the Regions, the Bundesrat has legislative authority in the political process as one of the five branches in the federal government. Each law must be passed at the Bundesrat after approval by the Bundestag. The 69 representatives of the Bundesrat are not directly elected nationally, but through regional parliaments in order to represent their Länder. The Bundesrat represents Länder's positions nationally along with their positions regarding EU policy. The Bundesrat can appeal laws and deny laws at the Bundestag. It has an absolute veto right in all instances of laws that directly affect the Länder. The Bundesrat is also the first organ that reviews a law and takes a position on it. Unlike the Bundestag, the Bundesrat does not work closely together with national interest groups. It is rather at the defense of regional interests - policy formation and decision occur at the subnational level(Interview 14.1.2004) Because the Bundesrat's positions emanate from regional positions, their energy policy is discussed in chapter 6.

#### **5.4.6 Large Companies**

Gas consumption as total German energy consumption was 24.4% in 2003.(AG Energiebilanzen) Even though there are more than 700 gas companies in Germany's three-tiered market, institutional transformations have been stalled due to the corporative system. The German gas market is comprised by three distinct groups of companies: the long-distance transporters, regional transporters and the local utility companies known as Stadtwerke. Because gas companies are not controlled by the government, changes are difficult to implement if not agreed upon by the companies themselves. Large companies have many of the same strategies as the government because their strategies fit into general domestic energy policy. The German gas companies claim that they have no reason to open their private pipelines to TPA competitors. German companies have also tried to increase their downstream as well as their upstream positions, and the government has rarely promoted policies

unfavorable to the large gas companies. The largest transformations to the German gas industry are a concentration of ownership, internationalization, and the integration of activities. In 2003, five years after the opening of the market, many new gas companies had disappeared, the price of gas had not been reduced, and many foreign companies had withdrawn themselves from the German market. The national gas market is clearly dominated by the largest five long-distance transporters, especially Ruhrgas, as the market is divided as follows: 50% Ruhrgas, 14.2 BEB, Verbundnetz 13.7%, RWE gas 11.7% and Wingas 10.25%.(Frankfurter Allgemeine 18.2.2002b)

TPA was difficult to introduce in Germany due to the large number of: grids, gas companies and areas of demand. Often TPA contracts were inexplicably delayed whilst the distribution arm of a transport company paid lower TPA fees. Germany has received several hundred requests for TPA since complete market opening in 1998, but only 25 requests have been granted representing 1% of total output. Germany is the only EU member state without a competent regulator of price and availability. The transposition of Directive 98/30/EC granted the Monopolkommission and the Bundeskartellamt little authority over the gas industry. The largest gas companies have insisted that VV agreements should be yearly refined as the market is characterized by many actors. They also believed that common rules should have emanated from their ranks. Ruhrgas had always been adamantly against the 1998 directive, speculating that it would drive up prices, endanger long-term contracts and drive down supply. It made clear that it would oppose the EU Commission looking into confidential contracts. Ruhrgas believed that it had low TPA costs and simple entry fees and rules, therefore leading to no need for regulation. Ruhrgas was the most negative of large five gas transporters towards enforced TPA.(Interview 2.6.2003) Conversely Wingas was the most receptive of the large five gas transporters to enforced TPA as long as legal unbundling was not imposed.(Interview 16.6.2003)

Ruhrgas is the largest German gas company, with a market presence of at least 50 percent. Because Ruhrgas believes that regulation affect company strategies, Ruhrgas has been very active in all national discussions and meetings relating to the

German gas market. It has been less dependent on the Verbände since the passage of directive 98/30/EC.(Interview 16.01.2004) Ruhrgas has not been willing to separate its transmission, distribution and storage functions. Even though Ruhrgas' major presence in the German gas market had warranted concern at the national level, it has been effective in pursuing most of its business strategies. Eon's acquisition of Ruhrgas was not without consequences for Ruhrgas. Energy secretary Alfred Tacke explained that Ruhrgas would have to sell its shares in VNG, regional distributor EWE and Gelsenwasser and sell 75 billion kilowatt hours of gas to electricity companies in order to merge with Eon.(Frankfurter Allgemeine 5.7.2002)

The established companies have had little incentive to change their business practices. The transposition of directive 98/30/EC marked an end to the 1935 German energy law's demarcation clause, which allowed large companies to control regions legally lying in their markets, thereby inhibiting the entrance of other companies. The new energy German law 24<sup>th</sup> May 2003 allowed companies to build pipelines in other companies' territories. It also introduced a stamp tariff outlining a simplified standard TPA entry fee scheme. It is important to note that even though the oligopolist nature of the German gas market is to the liking of the largest gas companies, the transposition of the 2003 directive is slated to impose larger structural changes as the Verbändevereinbarung system has been deemed defunct.

#### **5.4.7 Bundeskartellamt**

The Bundeskartellamt is an independent organ allowing or denying fusions based on the German cartel laws of 1958 and 1999. In comparison to other European cartel bodies, the Bundeskartellamt has little power over the gas industry, even though it had been considered a possible future national energy regulator in 2003. It has the ability of working with the Commission in concluding decisions on mergers in the gas industry. The Bundeskartellamt bases its conclusions not on price analyses, but after investigating for actors with dominant positions in the gas industry. Although the Bundeskartellamt has allowed Ruhrgas to acquire 150 Stadtwerke, it denied the fusion between Eon and Ruhrgas - which was overridden by BMWA minister Werner Müller. The German regulator wants to increase its post-

ante power but has little binding authority in regards to governmental decisions. The Bundeskartellamt has no ideal structural model for the gas market and believes that any amount of competition is conducive to economic growth as long as there exists a competitive market and a competent regulator is introduced through the transposition of the 2003 directive. It argues that high prices have not produced better quality to consumers or lower prices.(Interview 12.01.2004)

#### **5.4.8 Monopolkommission**

The Monopolkommission's statements and publications have had little impact on the German gas market and therefore will not be discussed.

### **5.5 Analysis of Independent Variables.**

At the national level, privatization in France and regulation and Germany had been the major tangible issues surrounding the liberalization of the gas market - enough to cause significant institutional transformation.

**Reductionism:** Key actors have been vital in effecting change at the national level - even more so than at the supranational level. Key actors at the national level are closer to the legislative formation of laws and business strategies. Key actors at the supranational level are buffered from effecting such direct institutional change because directives are guidelines towards direct legal implementation at the national level. The strongest national-level actors are also present in effecting institutional change at the supranational level, showing correlating policy positions by actors at the supranational and national levels. The shift in policy in France from 1998 to 2003 was revealed by a positive sentiment to privatization by key actors. In Germany the break down of the Verbändevereinbarung discussions between key actors in 2003 led to the introduction of regulated TPA and a regulatory authority.

**Transaction Costs:** The most relevant formal transaction costs forcing institutional transformation at the national level can be understood as regulated TPA and increased competition. National-level transaction costs related to privatization discussions surrounding GDF in France, and the breakdown of the VV system and the creation of a regulated gas market in Germany. The French market had been already

regulated. The German market had already been marked by large and independent private gas companies.

**Property Rights:** Shifting property rights in terms of the partial privatization of Gaz de France was discussed at the national level, but did not yet occur by 2003. It had however a long-standing impact on the national discussions regarding the transposition of the 1998 directive. Nicole Fontaine decoupled the issue of partial-privatization from that of the transposition of the 1998 directive. Privatization was simply not a concern at the national level in Germany.

## 5.6 Conclusion

As discussed in the chapter 4, in employing the Multi-Level Governance perspective I have found that the institutional dynamics have been caused by a top-down movement from the bodies of European Union as catalysts to institutional change in the national gas policies of France and Germany. This was embodied by the threat of court cases by the Commission at the European Court of Justice and decreased legitimacy of French and German policy negotiators in Brussels.

The pure national dynamics causing institutional transformation at the national level were due to: GDF seeking independence in terms of its business strategies from the French government thereby weakening the state-dirigisme structure, and of the dissolution of the *Verbändevereinbarung* system in Germany formally signifying the dissolution of corporative discussions between governmental and gas companies. At the national level independent ex-ante regulators represent the key organizations of the new institutional arrangements in France and Germany supplanting corporatism and state-dirigisme in the liberalized gas markets of the EU. The new forms of institutional arrangements that I have empirically discussed in this chapter lead to common institutional arrangements in both France and Germany, which I term *regulated neo-liberalism*. Regulated neo-liberalism responds to the qualitative and quantitative demands of being an EU member state responsible to EU liberalization policy in the gas sector.

## **Chapter 6 Subnational Level**

### **6.1 Introduction**

The subnational level has been the misplaced level in terms of common EU gas policy; little institutional change has occurred at the subnational as the systems of state-dirigisme and corporatism have been left functionally intact in France and Germany from 1998 to 2003. Although the subnational level is included in the provisions of directive 2003/55/EC, subnational actors expected little short- or medium-term change in the relationships between subnational governments and gas companies. The only notable changes have been the expansion of CRE, French gas regulator, into communal gas markets, the free choice of gas suppliers to French communes and the privatization in the of Stadtwerke in Germany in the late 1990's. Subnational actors expect little institutional transformations after the 1998-2003 empirical scope of this comparative case study.

I begin this chapter with an overview of why little institutional transformation has occurred at the subnational level. I then present my findings after brief background discussions of the subnational level in France and Germany. I present the empirical material according to the independent reductionist variable as follows: French communes, GDF, the Länder, regional companies and Stadtwerke. I end this last empirical chapter with a short analysis and conclusion.

### **6.2 Overview**

Directive 98/30/EC was directed towards liberalizing the long-distance transport market. The only large-scale apparent transformations that have occurred between 1998-2003 that could have instigated institutional transformations in either France or Germany are the purchasing of regional and communal gas utility companies on the German market in anticipation of directive 2003/55/EC. The 2003 directive was the first gas market liberalization directive incorporating distribution at the subnational level. The directive underscores that the separation of long-distance transmission and regional distribution systems must be legally enforced in order to exist in parallel of each other. The distribution sector will undergo 100% market

opening. Only in rare cases will derogation be granted to small companies experiencing financial and administrative burdens.

Regions have had no direct impact on the formation of the 2003 directive and have clearly been marginalized during discussions of the text. Regions in both France and Germany have traditionally had no competence in energy policy at either the national or the subnational levels. The directive creates a gas market not contingent on administrative policies but on the corporative behaviors of competitive companies. I claim that the most striking changes at the subnational level are apparent through the depoliticization of energy policy at the subnational level. Energy policy will no longer be contingent on administrative cooperation between communes and gas companies. Local governments become only one of many potential gas costumers after the subnational gas market is opened to competition.

The subnational level is the weakest policy level in terms of the MLG paradigm, as all subnational governments portray disengagement from energy policy at the supranational level. The EU system has not involved subnational governments in terms of gas policy. Appropriate institutional dynamics would require an entire reordering of the subnational system. Subnational administrators have very little knowledge of other regions and are not powerful enough to bargain with their counterparts at the EU level. Regional companies are also not able to influence transformations at the European market in opposition to the long-distance transmission companies. Although the German Länder are well embedded into the German federal system, there exists no comparable space for them at the EU level (Jeffrey 1997; Balme 1998). The French system is strongly characterized by a centralized national structure. Attempts at defusing decision-making to other levels have failed to reach any considerable weight (Smith 1997; Benz 1998).

### **6.3.1 France**

The transposition of the 1998 directive was delayed until January 2003. However as discussed in the previous chapter, the national French law of January 4th 2003 incorporated the 1998 directive and key aspects of the 2003 directive, leaving the specificities of legal unbundling and TPA for a later transposition of the 2003



directive. The idea of expanding the law to encompass key provisions of the 2003 directive was embraced by all large French parties. A parliamentary consensus believed that gas market liberalization was a necessary component of lower fuel prices leading to domestic industrial growth. Eligibility was opened completely to electricity producers, distributors and end industrial consumers, but not to households. The law gave customers the right to detail the quality, pressure, location and method of gas delivery. The law's most ambitious result was the appointment of an independent regulator, CRE. CRE was accorded the duty of ensuring transparency and justifiable TPA fees at the subnational level. CRE could also aid in TPA fee calculations and end existing contracts by negotiating agreements between interested parties. Through the CRE, clients could register themselves eligible through the Ministry of Energy and then be protected by standard contractual practice in addition to being warned of unjustifiable gas prices.

The French subnational level is not a system of regions. The regions were created in order to fit into the EC Committee of the Regions during the eighties. Their duties lie in issues of regional economic development and environmental protection in terms of energy policy. Gas policy has always been a matter for French communes. The subnational level consists also of the mairies which represent the national government. The mairies conduct civil duties such as issuing personal documents, conducting civil marriages and reporting political issues to the president. Mairies have no competence in energy matters. In addition, French départements have no competency in energy matters. Gas lies under the authority of communes and also various cooperative arrangements between communes known as *communautés de communes*, *intercommunautés*, and *régions urbaines*.

### **6.3.2 Communes**

GDF was chosen to supply the French distribution net in 1946 as gas was an expensive commodity to supply in post-WWII France. After 57 years of recognition of GDF as the national supplier of gas in France, the 2003 directive marked the end of its *de facto* cooperation with communes, thereby establishing a concessionary monopoly on the distribution market by default. Even though GDF does represent

more than 90% of the gas in the domestic market, it is incorrect to assume that communes are required to commit themselves to GDF. GDF has been the national supplier of gas because of the financial and technical limitations of supplying gas service in France. There are various grades and pressures of gas, which only a company with sufficient capital such GDF can exploit. Communes cannot afford the building of a distribution net - which also requires constant supervision not served by the technical capacities of the French commune. Therefore communes have traditionally concluded long-term contracts with GDF. French communes transfer concessions to GDF for a period of 30 years. During this period no other gas company is allowed to enter the commune's gas distribution net. GDF is responsible for the entire distribution process and the technical supervision of the gas net. Communes merely act as accountants and request reports from GDF at biannual meetings to ascertain that gas distribution is functioning correctly. GDF allows the nets to amortize themselves during the 30 year period. After this period, GDF and communes decide whether they care to continue cooperation. Even after the end of this concessionary agreement, communes are responsible for maintaining public service obligations for public buildings such as schools and other buildings owned by communes. (Interview 5.6.2003)

Due to the 2003 directive, the communes have become customers just like any other industrial customer - thereby ending the de jure state-dirigiste model between the French state and the industrial sector. After July 2004, communes are allowed to freely choose their supplier according to price and service in addition to public service matters. Prior to TPA at the distribution level, companies were bound to the same supplier chosen by their commune. Of the 36,000 communes, 10% have either no gas supplier or have their own local gas companies such as found in the large cities of Bordeaux and Grenoble.(Interview 6.6.2003) 150 companies or 4% of total consumption banded together in 2001 to access lower gas prices through TPA. This collective purchasing is also practiced by conglomerates of communes interested in lowering gas costs. This trend is ensured by the Law of Chevènement which concedes larger powers and national financial assistance to communes that band together to purchase gas.(Interview 6.6.2003) In addition because GDF is in reality

not a universal supplier, national French law No98-546 2 July 1998 gave GDF three years to serve communes that made service requests. After 2001 these communes were allowed to search for other suppliers. However little change in distributor has been requested by communes as of 2003. This movement towards larger economies of scale is welcomed by overall EU gas policy. GDF still retains its large presence in the French gas market even as communes are allowed to change suppliers. Thus little de facto institutional change is currently expected in the relationship between governmental authorities and gas companies at the subnational level in France.

### **6.3.3 GDF**

The major transformation for GDF has been a loss in its distribution division to foreign competitors. This loss has been balanced by GDF's entry into foreign markets. Since abiding by the TPA provisions of the 1998 directive, GDF has lost 15% of the domestic market, particularly in the southwest. The concessionary system will be largely unaffected by the 2003 directive. Communes can still choose GDF as their distribution supplier. The contractual relationship becomes then a pure contract of supply without infrastructure construction provisions, first with the transporters and secondly with the distributors. Both transport and supply tariffs are to be controlled by the CRE regulator. The commune is allowed to define the characteristics of the gas transported and how it is delivered. The balancing between maximum and minimum delivery along with fair contracts of delivery are also ascertained by CRE. ([www.gazdefrance.com/collectivites/deregulation/achats.htm](http://www.gazdefrance.com/collectivites/deregulation/achats.htm))

GDF has also positioned itself for partial-privatization by becoming more customer-oriented in order to minimize its image as a public enterprise. Communes are now treated as customers - as any industrial or household customer. Tariffs charged to communes have been simplified and are now readjusted in May and November. Because French companies are no longer bound to accept communes' choice of supplier as their own, GDF must deal with a more complex market. In order to meet increased competition, GDF has been building its distribution net to reach more companies and small communes. The only other large companies on the French market, GSO and CFM operating in the southwest, are owned by GDF. The

other 17 non-nationalized distributors and the five new companies represent 4% of the French market.(Sénat rapport 03-075--6) It is expected that the only companies with sizeable future prospects on the French market will be Belgium's Electrabel, Germany's Eon and GDF-EDF.

#### **6.4.1 Germany**

Directive 98/30/EC was transposed as an amendment on May 20th 2003 (BGB1 I S. 686), amending national German energy law of April 24th 1998 (BGB1. I S 730). The amendment contained no clauses affecting the distribution level as it was an explicit move by the Bundesrat in avoiding prosecution by DG Tren at the ECJ. In comparison to the ten-page May 20th 2003 amendment, the one-hundred and four page amendment proposal to the 1998 energy law transposing directive 2003/55/EC contained key clauses affecting the distribution market. Because of the failure of the Verbändevereinbarung arrangement, a currently unnamed national regulator, the Bundesregulierungsbehörde and regional regulators with authority over electricity, gas, telecommunication and mail have the authority to conduct checks on TPA, unbundling, gas pricing and monopolistic behavior of vertically integrated companies. The Bundesregulierungsbehörde is entrusted with also protecting companies with less than 100,000 customers from unfair business practices by large companies. These companies which tend to be the Stadtwerke are exempt from the market liberalization measures outlined in the 2003 directive.(Interview 1.3.2004) Therefore the regional suppliers that do not adjust their business practices to embrace larger markets are the gas companies most likely to suffer from increased competition. Even though the Stadtwerke are exempt largely from market liberalization clauses of the 2003 directive, key changes have occurred as a result of policies of the Schröder government. In addition, most new gas companies that have appeared in the German market after the 1998 directive have either disappeared or been merged into larger integrated energy conglomerates such as RWE and Eon.(Interview 18.6.2003)

## **6.4.2 Länder**

Although the Länder have had considerably more authority than their French regional counterparts at the national level, the Länder have not exhibited any considerable authority in terms of gas policy. In the gas sector they have the duties of technical oversight, tariff control and protection of small consumers. The Länder can only exercise authority over companies with nets lying within their borders. Companies operating in the liberalized market with operations extending into several regions do not have any contact with the Länder. Both Bavaria and Baden-Württemberg, Länder that have traditionally had vested interests in the gas market due to long-distance pipelines crossing their territory, find that the 2003 directive further removes gas policy from their competencies along with the end of demarcation rights as outlined by the 1998 directive. However because competition has functioned so well in the electricity market in lowering prices, the Länder are allowed under the amendment proposal of the 2003 directive to appoint regional regulators that collaborate with the Bundesregulierungsbehörde, the Monopolkommission and the Bundeskartellamt. (Interview 18.06.2003)

## **6.4.3 Regional companies**

The regional market is expected to disappear under increased competition as gas markets that have existed within the Länder have also disappeared. Prior to the demise of the VV system in 2003, the contractual arrangements of the VV system sustained regional companies by promoting a point-to-point model in which the regional companies transported gas from the large transmission companies to the Stadtwerke. Regional companies have attempted to band together to little avail. Even companies that have been fiercely acquiring Stadtwerke such as Tugar have been acquired themselves by the large transporters such as Ruhrgas, which in turn has further been acquired by E.on.

## **6.4.4 Stadtwerke-Communes**

The local gas market in Germany is the most complex in Europe as there are approximately 711 small gas companies and Stadtwerke. Law 28 of the German

constitution states that communes can organize themselves as they wish. The national Federal state and the Länder have no authority in intervening in matters lying under the purview of the communes. Communes usually have the responsibility of coordinating trash, water, electricity and gas services. Most Stadtwerke have been traditionally owned by their communes, cities or other Stadtwerke and have had monopolies over their local markets. In addition their accounts are tied up to other local services such as transportation, pools, energy.(Interview 27.5.2003) Therefore Stadtwerke have been involved in local politics and have had close ties with SPD which has been attempting to protect Stadtwerke as an extension of local economies and employment in order to retain voters. Employees in pure gas companies that have been acquired by larger companies have experienced layoffs. For example, after being purchased by GDF, Berlin's GASAG laid off 1,400 employees.(Interview 13.6.2003)

Transformations have not occurred because both large and small gas customers in Germany have little incentive to change their supplier of gas. Stadtwerke have due to their closeness to local politics maintained monopolies in their localities. Local gas prices have not fluctuated greatly as a result liberalization politics in Germany. It was expected that many local gas companies would disappear as customers would be free to choose between suppliers. However German customers exhibit little switching between gas companies. The fragmented market and pancaking between large, regional and local gas companies have rendered TPA problematic. Communes and Stadtwerke have been largely negative to gas market liberalization and prefer to maintain the established institutional arrangements as they cannot compete against the large gas transporters. Also most Stadtwerke have not changed their own suppliers.(Interview 13.6.2003)

The greatest transformations have been rather a result of communes' budgetary problems. Due to new public management models in the nineties, communes had been given more duties but fewer resources. Unemployment had risen in the public sector. Communes sold their Stadtwerke during 1997 – 2002, demanding very high prices, as buyers thought the local gas sector a lucrative prospect. After 2002 the spate of Stadtwerke privatization had subsided because the local gas market did not

reap large profits for its owners in spite of gas market liberalization policies.(Interview 18.6.2003) In 1990 66% of Stadtwerke were pure-publicly owned as opposed to 47% in 2001.(Interview 15.1.2003)

As companies with less than 100,000 will remain untouched by the 2003 directive, most Stadtwerke will not be directly affected by gas market liberalization. The only transformations expected to continue are the acquisition of small companies by large integrated energy concerns such as Eon and RWE. Lastly, due to the spate of Stadtwerke privatizations, small gas companies have become more attentive to customer service and their stockholders, while remaining responsible to their communes in terms of local utility responsibility. Stadtwerke have pooled resources in order to collectively purchase gas deliveries and combine communal gas distribution. Gas pricing and buying will be calculated on shorter-term bases and the small companies use VKU and BGW to further their political initiatives at the national level. The largest competitors for the Stadtwerke are not other companies as much as other forms of energy such as oil. Lastly, VKU believes that the subnational gas market will not be endangered as long as a regulated separation between distribution and transport exists between the large transporters and the local distributors.(Interview 1.3.2004)

## **6.5 Analysis**

As discussed in the empirical presentation, there has been spurious institutional change at the subnational level from 1998 to 2003. The 2003 gas directive has affected negligible transformational pressure on the distribution system.

**Reductionism:** There have been no key entrepreneurial actors operating at the subnational level.

**Transaction Costs:** No transactional costs have been placed on either regional governments or local gas companies. The only noticeable changes have been privatizations of Stadtwerke from 1998 to 2002 in Germany, and the establishment of a supplier and client relationship between GDF and French communes along with the

presence of the CRE regulator on consumer pricing and TPA in France. However these changes have been so marginal as to constitute little institutional transformations in the relationship between governments and gas companies at the subnational level.

**Property Rights:** The spate of Stadtwerke privatizations and acquisitions from 1997 in 2002 in Germany brought neither large profits to their owners nor institutional transformations to the subnational level. Privatization had simply not occurred in France.

## **6.6 Conclusion**

In this chapter I have discussed the lack of institutional change between subnational governments and the subnational gas industry. Thus the institutional arrangements of state-dirigisme in France and corporatism in Germany remain constant at the subnational level. Although directive 2003/55/EC included the subnational level into its provisions, the immediate impact has not been significant. However significant institutional transformations may occur after the 1998-2003 empirical limits of this study.



## **Chapter 7 Summary and General Conclusions**

### **7.1 Introduction**

I have employed the previous three empirical chapters in testing the theoretical and analytical framework of this comparative case study. I have portrayed institutional transformations in Germany and France in light of EU gas market liberalization policies from 1998 to 2003. I prepared the analysis by assessing how corporatism in Germany and state-dirigisme in France as institutional structures characterizing the relationship between governments and gas industries at separate supranational, national and subnational levels have been transformed. I limited the empirical time period to 1998-2003 by studying the implementation of, *Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas* and the negotiation of, *Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC*. My three independent variables, *Variable 1 reductionism*, *Variable 2 transaction costs*, and *Variable 3 property rights* were culled as central aspects of New Institutional Economic Theory. The three independent variables were tested empirically through my intermediate variable, *Variable 4 MLG levels*, at the supranational, national and subnational levels.

### **7.2 Presentation of Analysis and Results**

#### **7.2.1 Supranational Level**

At the supranational level, the superior institutional capacity of EU bodies functionally eliminated the need to preserve the institutional structures of corporatism and state-dirigisme as state governments and gas companies no longer needed or could rely on their traditional policy-making structures in progressing their initiatives. Institutional change was the product of key policy-making entrepreneurial actors and secondly of the transaction costs of implementing the 1998 gas directive and negotiating the 2003 gas directive. The issue of privatization or of any other property rights transfers was not mentioned at the supranational level.

Therefore at the supranational the qualitative empirical presentation confirmed *Variable 1 reductionism* and *Variable 2 transaction costs* as significant and discounted *Variable 3 property rights* as spurious. *Independent Variable 4 MLG levels* showed that institutional change had occurred at the supranational level as corporatism and state-dirigisme no longer apply. I have characterized the new German and French institutional arrangement at the supranational level as anchored through the EU due to the *EU's superior institutional capacity*.

### **7.2.2 National Level**

Key entrepreneurial actors in both countries were considerable forces in pushing for legislation transposition of the 1998 and 2003 directives. Both France and Germany were pressured by transaction costs originating at the supranational level to transpose the 1998 directive into national laws, thus avoiding loss of legitimacy in terms of European political and business negotiations and prosecution by EU bodies. Pure national level transaction costs also imposed institutional transformation. In Germany the ineffective nature of the corporatist structure in negotiating gas policy was dissolved as the *Verbändevereinbarung* system no longer achieved cooperative policy results. In France the end of state-dirigisme was signaled by GDF's interest in distancing itself from the government in the interest of operating as a competitive gas company. Although the privatization of GDF was discussed at the national level, property rights transfers were not considerable issues in terms of institutional transformation at the national level.

Therefore at the national level the qualitative empirical presentation confirmed both *Variable 1 reductionism* and *Variable 2 transaction costs* as significant and discounted *Variable 3 property rights* as spurious. *Independent Variable 4 MLG levels* showed that institutional change had occurred at the supranational level. These results were similar to those at the supranational level, as EU liberalization policy of the gas market has penetrated the national level after effecting institutional transformation at the supranational level. State-dirigisme in France and corporatism in Germany have been replaced by regulated gas-markets in which gas companies and national governments must accept differing roles and positions in order to

perpetuate the strength of their national gas sectors. In chapter 5, I have discussed the new national level institutional arrangement present in both France and Germany *regulated neo-liberalism*.

### **7.2.3 Subnational Level**

In the period 1998-2003 little institutional change had occurred at the subnational levels of Germany and France. The EU gas liberalization policy through gas directive 1998 did not effect the distribution of gas at the local level. By 2003, EU gas liberalization policy had not yet penetrated the subnational level in terms of institutional change. No considerable key entrepreneurial actors or transaction costs forcing institutional transformation had been present. The only noticeable changes had been the marginal privatization of Stadtwerke in Germany.

Therefore at the subnational level, the qualitative empirical presentation did not confirm *Variable 1 reductionism* and *Variable 2 transaction costs* as significant. *Variable 3 property rights* was found spurious as the privatizations of Stadtwerke in Germany did little to cause institutional change. Also *independent Variable 4 MLG levels* showed that institutional change had not occurred at the supranational level. Therefore state-dirigisme in France and corporatism in Germany still define institutional arrangements at the subnational level.

### **7.3 Multi-Level Governance**

The Multi-Level Governance perspective has proven itself a useful analytical tool in understanding both the effects of institutional dynamics caused by EU policy disenabling the state-centric model and also how policy is distilled from one level to another creating a flexible policy-making apparatus. Two points have been apparent throughout this case study. The supranational level has tremendous influence over the entire MLG level structure while the regional level has been marginalized. In sum, the MLG variable along with its hypothesis in section 3.4 has been proven valid. Thus, institutional decoupling of state-centric model into supranational, national and subnational levels have as a result of gas policy have been significant in effecting institutional transformations.

## **7.4 New Institutional Economic Theory**

The NIE Theoretical framework has also proven helpful in analyzing the empirical data.

Variable 1, reductionism, has been the most significant variable in understanding causes towards institutional change and is therefore a valid indicator and explanation of institutional transformation in the French and German gas markets from 1998 to 2003 across all MLG levels. Hypothesis one in section 3.4 is thus valid confirming that institutional transformations have occurred to state-dirigisme in France and corporatism in Germany as explained by key entrepreneurial actors who have exercised their policy-making capabilities. These key entrepreneurial actors are the instigators of change as opposed to change caused by a multitude of negotiating actors.

Variable two, transaction costs, has also proven itself a significant variable in identifying and charting institutional transformations in the relationships between French and German governments and gas companies in the gas market due to the liberalization of the gas industry at all MLG levels. Therefore hypothesis 2 in section 3.4 is valid, confirming that institutional transformations have occurred because transaction costs have become too costly for the existing institutional structures of state-dirigisme in France and corporatism in Germany. Directive 98/30/EC and directive 2003/55/EC have imposed specific transaction costs on existing institutions forcing commensurate pressures on competitive gas markets and their embedded organizations effecting institutional change.

Variable three, property rights, has proven itself across all MLG levels to not be a significant factor of institutional change. The only property rights transfers have occurred in Germany at the subnational level, leading to no institutional transformations at that level. Hypothesis 3 in section 3.4 is not valid; thus not proving significant that institutional change in the French and German gas sectors has been due to shifting property rights.

## 7.5 Conclusion

In responding to this study's central research question,

*What transformations have occurred to the institutional structures between the gas industry and governments of the French and German gas sectors as a result of the European Union's liberalization of the energy market in the period 1998-2003?*

I have arrived to four main conclusions. First, the Europeanization of the French and German gas markets has caused similar corresponding institutional transformations in both countries at each particular MLG level. Second, institutional model transformations are affected by policy lag. Policy-related dynamics in the gas sector begins at the supranational level before penetrating the national level and then subsequently the subnational level. Third, institutional changes are dependent on key policy-making entrepreneurs and transaction costs but not shifting property rights. Fourth, the holistic institutional structures of state-dirigisme in France and corporatism in Germany that have traditionally defined the relationship between governments and the gas industry in the French and German gas sectors have been dissected into three distinct levels. At each of these three levels, institutional transformations with their own policy considerations, influences and ultimately, separate institutional structures are found. State-dirigisme in France and corporatism in Germany no longer portray the unitary and unified institutional arrangements present in both countries. The French and German supranational levels are now defined by the superior institutional capacity of strong EU organizations in opposition to national and subnational organizations operating in Brussels. The gas sectors of the French and German national levels are characterized by institutional arrangements defined by the qualitative and quantitative clauses of the 1998 and 2003 directives. I term this institutional arrangement apparent in the national gas sectors of France and Germany *regulated neo-liberalism*. Because negligible institutional transformation has occurred at the subnational level, the traditional institutional structures of corporatism in Germany and state-dirigisme in France at the subnational have remained intact as of 2003.

## Bibliography

AG Energiebilanzen. <http://www.ag-energiebilanzen.de/daten/1h2003.pdf>

Andersen, Ib. (1990) *Valg af Organisations /Sociologiske Metoder - et Kombinationsperspektiv*. Copenhagen, Denmark: Samfundslitteratur.

Andersen, Jeffrey J. (1992) *The territorial imperative. Pluralism, Corporatism and the Economic Crisis*. Cambridge, UK: Cambridge University Press.

Andersen, Svein. (1990) "Komparative case-studier og generalisering: Strategier for Modellering og utvelgning." *Tidsskrift for samfunnsforskning* 31: 367-378.

Andersen, Svein (1993) *The Struggle over North Sea Oil and Gas. Government Strategies in Denmark, Britain and Norway*. Oslo: Scandinavian University Press.

Andersen, Svein (1997) *Case-studier og generalisering : forskningsstrategi og design*. Sandviken, Norway: Fagbokforlag.

Andersen, Svein (2000a) "EU Energy Policy: Interest Interaction and Supranational Authority." *Arena Working Paper*. No 5, February 2000. Oslo: Norway: Arena. University of Oslo.

Andersen, Svein (2000b) "European Integration and the Changing Paradigm of Energy Policy, The case of natural gas liberalisation." *Arena Working Paper*. No 13, August 2000. Oslo: Norway: Arena. University of Oslo.

Andersen, Svein (2000c) "Hvordan er EU mulig? Et ny-institusjonelt sosiologisk perspektiv." *Arena Working Paper*. No. 3, February 2000. Oslo: Norway: Arena. University of Oslo.

Anderson, Jeffrey J. (1996) "Germany and Structural Funds: Unification Leads to Bifurcation." chp 5 in Hooghe, Liesbeth. *Cohesion Policy and European Integration: Building Multi-Level Governance*. Oxford: Oxford University Press.

Ankarloo, Daniel. (1990) *"Institutions", What is in a Word? A Critique of the New Institutional Economics*. Lund, Sweden: Lund University.

Ansel, Christopher K, et al. (1997) "Dual Networks in European Regional Development Policy." *Journal of Common Market Studies*. Vol. 35, No 3. 347-371.

Aoki, Masahiko. (2000) "Institutional Evolution as Punctuated Equilibria" in *Institutions, Contracts and Organizations: Perspectives from New Institutional Economics*" Cheltenham, UK: Edward Elgar

Austvik, Ole Gunnar. (1996) *Liberalization of the European Gas Market*. Arbeidsnotat nr 31/1996. Høgskolen i Lillehammer.

Assemblée Générale. (1999) *Report CESX9900117V*.

Assemblée Générale. (2003) *Loi no 2003-8 du 3 janvier, article 2*. *Journal Officiel*.

Balme, Richard and Jouve, Bernard. (1996) "Building the Regional State: Europe and Territorial Organization in France." chp. 7 in Hooghe, Liesbeth. *Cohesion Policy and European Integration: Building Multi-Level Governance*. Oxford, UK: Oxford University Press.

Balme, Richard. (1998) "The French Region as a Space for Public Policy". chp 11 in Le Gales, Patrick et al. *Regions in Europe*. London, UK: Routledge.

Baumgartner, Frank R. (1994) "The Many Styles of Policymaking in France." chp 4 in Keeler, John. *Chirac's challenge : liberalization, Europeanization, and malaise in France*. New York: St. Martin's Press.

Benz, Arthur. (1998) "German Regions in the European Union: from joint policy-making to multi-level governance." chp 7 in Le Gales, Patrick et al. *Regions in Europe*. London, UK: Routledge..

Benz, Arthur and Eberlein, Burkard. (1999) "The Europeanization of regional policies: patterns of multi-level governance." *Journal of European Public Policy* 6:2 June 1999: 329-48.

Benz, Arthur. (2003) "European Union Multi-Level Governance" chp 4 in Kohler-Koch, Beate. *Linking EU and National Governance*. Oxford, UK: Oxford University Press. Maxwell.

Beson, Jean. (1999) *Avis 68 (98-99) Tome VI Annexe au proces-verbal de la seance du 19 Nov 1998*. Paris, France: Sénat.

BGW. (2000) Bundesverband der deutschen Gas- und Wasserwirtschaft. *Yearly statistics*. Berlin, Germany.

Black, Thomas R. (1999) *Doing quantitative research in the social sciences : an integrated approach to research design, measurement and statistics*. London, UK: Sage.

Bromley, Daniel W. (1989) *Economics Interests and Institutions. The conceptual Foundations of Public Policy*. New York, NY: Basil Blackwell Inc.

Bulmer, Simon. (1994) "History and Institutions of the European Union." Chp. 1 Artis, Mike et al. in *The Economics of the European Union*. Oxford, UK: Oxford University Press.

CDU. (2002) "Kein Wettbewerb am deutschen Energiemarkt. Kunden haben das Nachsehen" 13.5.2002. <http://www.cdulandesgruppenrw.de/news/1021455934.shtml>

CGT. (2003) *Branch IEG Communiqué de presse du 19 mars 2003*. Paris, France.

Chrysochoou, Dimitris N. (2001) *Theorizing European Integration*. London, UK: Sage Publications.

Coase, R. H. (1991) "The Institutional Structure of Production" in *The American Economic Review*. 82:713-719.

Coase, R. H. (1937) "The Nature of the Firm" *Economica*. London School of Economics and Political Science (4) 1937:713-719.

Commons, John R. (1934) *Institutional Economics: Its Place in Political Economy. 1990 Edition. Volumes I & II*. New Brunswick: Transaction Publishers.

Conseil régional Nord-Pas de Calais. (1998)  
<http://www.crnpc.fr/1998/rogaland/norfra.htm>.

Courteau, Roland, *Avis 75 Tome VI 2003-2004 commission affaires*. Paris, France: Sénat.

Dahl, Ottar. (1997) *Gruntrekk i historie-forskningens metodelære*. Oslo, Universitetsforlaget.

Demsetz, Harald. (2000) "Dogs and tails in the economic development story." Chp 9 in Menard, Claude. *Institution, Contracts and Organizations. Perspectives from New Institutional Economics*. Cheltenham, UK: Edward Publishing Ltd.

DGEMP. (2002) Département Général de l'Énergie et Matières Premières. *Rapport annuel de la DGEMP pour 2002 "Le changement de régime juridique pour le réseau de transport de gaz naturel en France"*. Paris, France.

Dinan, Desmond. (1994) *Ever Closer Union?* Houndmills, UK: Macmillan Press.

DRI.WEFA. (2001) "Report for the European Commission Directorate General for Transport and Energy to determine changes after opening of the Gas Market in August 2000. Vol. I European Overview. July 2001.



DRI.WEFA. (2001) "Report for the European Commission Directorate General for Transport and Energy to determine changes after opening of the Gas Market in August 2000. Vol. II: Country Reports. July 2001.

Drobak, John N and Nye, John V. C. (1997) *The Frontiers of the New Institutional Economics*. San Diego, CA:Academic Press

Dumez, Hervé et al. (1994) "Privatization in France: 1983-1993." chp 4 in Wright, Vincent. *Privatization in Western Europe. Pressures, Problems and Paradoxes*. London, UK:Printer Publishers.

Dunleavy, Patrick. (1991) *Democracy, Bureaucracy & Public Choice*. New York: Harvester Wheatsheaf.

Eisner, Marc Allen. (2000) *Contemporary Regulatory Policy*. Boulder, CO: Lynne Rienner Publishers, Inc.

Eldevik, Frøydis. *Liberalisering av Gassmarkedet i Europa. EUs Gassdirektiv av 1998*. No. 4/99 Oslo: Advanced Research on the Europeanisation of the Nation-State. Raport.

Estrada, Javier, et al. (1995) *The Development of European Gas Markets. Environmental, Economic and Political Perspectives*. Chichester: John Wiley and Sons.

Esser, Josef. (1994) "Germany: Symbolic Privatizations in a Social Market Economy." Chp 5 in Wright, Vincent. *Privatization in Western Europe. Pressures, Problems and Paradoxes*. London: Printer Publishers.

European Union Commission (2000) "COM (2000) 769 Final. Green Paper: Towards a European strategy for the Security of Energy Supply." Brussels: European Commission.

European Commission. (28 January 2002) "A Long-Term Vision of a Fully Operational Single market for Gas in Europe".

European Commission. (2001) *2000 - Annual Energy Review*. January 2001. Luxemburg: EU Directorate-General for Energy and Transport.

European Commission. (1999) DG COMP. "Commission Press Release." IP/99/708.

European Commission. (2001) DG COMP. "Commission Press Release." IP/01/1641.

European Commission. (2002) DG COMP. "Commission Press Release." IP/02/1084.

European Commission. (2002) DG COMP. "Commission Press Release." IP/02/1293.

European Court of Justice. (2002) *Case 259/01*. "Failure to fulfil Treaty obligations - Internal market in natural gas - Directive 98/30/EC of the European Parliament and of the Council - Measures taken by participants in the market - Failure to implement within the prescribed period"

European Court of Justice. (2004) *Case C64-03* "APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas (OJ 1998 L 204, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under that Directive."

European Energy Report. (1995) "EU liberalization debate sees France, UK still Poles apart." 9.6.1995.

European Parliament. (2002). EP Com (2002) 488- C5-0449/2002-2002-020-(COD).

Eurogas. (2003) "Annual Report 2002-2003"

Financial Times. (2000) "World News - Europe: French gas users spur market liberalization." August 31, 2000.

Financial Times. (2002) "Comment & Analysis: Power games: The European Commission wants the Barcelona summit to acceleration progress towards energy deregulation." By David Buchan and Daniel Dombey." Financial Times. 14.3.2002.

Financial Times. (2002) "Comment & Analysis: France goes on sale." 18.6.2002.

Frankfurter Allgemeine. (2000) "VNG fuehlt sich fuer den liberalisierten Gasmarkt geruestet." 23.05.2000.

Frankfurter Allgemeine. (2001) "EU-Gipfel" 24.3.2001

Frankfurter Allgemeine. (2002) "Wettbewerb auf Sparflamme." 21.1.2002.

Frankfurter Allgemeine (2002) "Durchschnittlicher Gaspreis" 9.2.2002

Frankfurter Allgemeine. (2002) "Letzter Ausweg Ministererlaubnis." 18.2.2002.

Frankfurter Allgemeine. (2002)b "Im Streit um das Gasmarkt wird geblufft und taktiert. 18.2.2002.

Frankfurter Allgemeine. (2002) "Interview, die Ministererlaubnis ist Gerechtfertigt". 2.7.2002.

Frankfurter Allgemeine. (2002) "Eon-Ruhrgas-Fusion." 5.7.2002

Frankfurter Allgemeine (2002) "EU Gipfel Deutschland unterstützt Frankreich." 15.08.2002

Feigenbaum, Harvey B. (1985) *The Politics of Public Enterprise: Oil and the French State*. Princeton, NJ: Princeton University Press.

Freeman, John R. (1989) *Democracy and Markets: The Politics of Mixed Economics*. Ithaca, NY: Cornell University Press.

Furubotn, Eirik G et al. *Institutions and Economic Theory: the Contributions of the New Institutional Economics*. (1997) Ann Arbor, MI: The University of Michigan Press.

Furubotn, Eirik G et al. (1991) "Concluding Remarks." *The New Institutional Economics. A Collection of Articles from the Journal of Institutional and Theoretical Economics*. Tuebingen, Germany: J. C. Mohr.

Gaz de France. (2000) "Rapport Annuel" Paris, France.

Gaz de France. (2001) "Rapport Annuel" Paris, France.

Gaz de France. (2001b) "Gaz de France renforce sa présence en mer du Nord britannique" 12.6.2001. <http://www.gazdefrance.com/public/page.php?iddossier=38&idarticle=475&imprimer=true>

Gaz de France ([www.gazdefrance.com/collectivites/deregulation/achats.htm](http://www.gazdefrance.com/collectivites/deregulation/achats.htm))

Gabel, Matthew J. (1998) *Interests and Integration: Market Liberalization, Public Opinion and European Union*. Ann Arbor, MI: University of Michigan Press.

Geradin, Damien. (2001) *The Liberalization of Electricity and Natural Gas in the European Union*. The Hague: Kluwer Law International.

Gas Transmission Europe. 02SD126-Final. "Proposals for a second directive concerning common rules for the internal gas market." [www.gte.be](http://www.gte.be)

Glachant, Jean-Michel et al. (2000) "Why do the European Union's electricity industries continue to differ? A new institutional analysis" chp 21 in Menard, Claude. *Institutions, Contracts and Organizations, Perspectives from New Institutional Economics*. Cheltenham, UK: Edward Elgar.

- Gonnot, Francois-Michel. (2002) *Discussion, no 400 Gonnot 26 Nov 2002*. Paris, France:Assemblée Générale.
- Haas, Ernst B. (1975) *The Obsolescence of Regional Integration Theory*. Berkeley, CA: University of California Press.
- Harrinvirta, Markku Olavi. (2000) *Strategies of Public Sector Reform in the OECD Countries*. Helsinki: Suomen Tiedesura.
- Harriss, John. (1995) *The New Institutional Economics and Third World Development*. London,UK:Routledge.
- Heap, Shaun H et al. (1991) *The Theory of Choice. A Critical Guide*. Oxford,UK:Blackwell.
- Heinelt, Hubert. (2003) chp 7 in chp 4 in Kohler-Koch, Beate. *Linking EU and National Governance*. Oxford, UK:Oxford University Press.
- Herrigel, Gary. (1996) *Industrial constructions: The Sources of German Industrial Power*. New York, NY: Cambridge University Press.
- Hodge, Graeme. (2000) *Privatization. An International Review of Performance*. Westview Press: Boulder, CO.
- Hodgson, Geoffrey M. (1993) “Evolution and Institutional Change. On the nature of selection in biology and economics.” chp. 10 in Mäki, Uskali et al. *Rationality, Institutions and Economic Methodology*. London: Routledge.
- Hoffman, Stanley. (1991) *The European Community: decision-making and institutional change*. Boulder, CO: Westview Press.
- Hooghe, Lisebeth. (1996) *Cohesion Policy and European Integration: Building Multi-Level Governance*. Oxford,UK: Oxford University Press.
- Hooghe, Liesbeth. (1995) “Subnational Mobilisation in the European Union.” in Hayward, Jack. *The Crisis of Representation in Europe*. London: Frank Cass & Co.
- Hoopes, Stephanie. (1997) *Oil Privatization, Public Choice and International Forces*. London, UK:Macmillan Press LTD.
- Jachtenfuchs, Markus and Kohler-Koch, Beate. (1996) “Regieren im dynamischen Mehrebenensystem.” Chp 1. in Jachtenfuchs, Markus et al. *Europäische Integration*. Stuttgart, Germany: Leske und Budrich.

Jeffrey, Charlie. (1997) "Farewell the Third Level? The German Länder and the European Policy Process." in Jeffrey Charlie. *The Regional Dimension of the European Union: Towards a Third Level in Europe?* London: Frank Cass.

Jeffrey, Charlie. "Sub-National Mobilization and European Integration: Does it Make Any Difference?" *Journal of Common Market Studies*. March 2000. Vol. 38, No. 1:1-23.

Johnson, Nevil. (1989) *The Limits of Political Science*. Oxford, UK: Oxford University Press.

Jones, George. (2000) "The Limits of Economic Dirigisme and Collusion." Chp 4 in Raymond, Gino G et al. *Structures of Power in Modern France*. New York, NY: St. Martin's Press Inc.

Kassim, Hussein et al. (2000) *The National Co-ordination of EU Policy: The Domestic Level*. Oxford, UK: Oxford University Press.

Keating, Michael et al. (1995) *The European Union and the Regions*. Oxford: Clarendon Press.

Keating, Michael. (1998) *The New Regionalism in Western Europe: Territorial Restructuring and Political Change*. Cheltenham, UK: Edward Elgar.

Keohane, Robert. (2001) *Power and Interdependence*. New York, NY: Longman.

Kohler-Koch, Beate et al. (1999) *Europäische Integration*. Stuttgart: Germany Leske+Bubrich.

Kohler-Koch, Beate. (1998) "The Evolution of European Governance." *Reihe Politikwissenschaft*. Article no.58.

Kohler-Koch, Beate. (2003) "Interdependent European Governance" chp 2 in Kohler-Koch, Beate. *Linking EU and National Governance*. Oxford, UK: Oxford University Press.

Kohler-Koch, Beate. (2000) "Regional Integration as Social Process." Chp. 5 in Neunreither, Karlheinz et al. *European Integration after Amsterdam*. Oxford, UK: Oxford University Press.

Knill, Christoph. (2001) *The Europeanization of National Administrations: Patterns of Institutional Change and Persistence*. Cambridge: Cambridge University Press.

Knudsen, Christian. (1993) "Modelling Rationality, Institutions and Processes in

Economic Theory. chp 11 in Maki, Uskali et al. *Rationality, Institutions and Economic Methodology*. Routledge; London, UK.

La Tribune (2002) "Nous garderons le contrôle de nos gazoducs." 3.10.2002

La Tribune. (2002) "EDF et GDF se préparent à leur grande mutation." 7.2002.

Le Gales, Patrick et al. (1998) *Regions in Europe*. London: Routledge.

Le Monde (2000) "La gauche veut encadrer l'ouverture d'EDF a la concurrence" 19.01.2000.

Le Monde. (2000) "Gaz de France veut doubler sa taille dans les cinqs ans." 16.03.2000.

Le Monde. (2002) "Gaz de France affiche des résultats records dans l'attente de sa privatization partielle. 21.03.2002.

Le Monde. (2002) "Électricité. La France ne refuse pas l'ouverture totale de son marché. 7.10.2002.

Le Monde. (2003) EDF veut bien se separer de GDF mais pas du reseau haut tension. Pascal Galinier. 29.3.2003.

Les Echos. "EDF-GDF: le tabou politique de l'ouverture du capital leve." 4.07.2002.

Lijphart, Arend. "Comparative Politics and the Comparative Method" in *The American Political Science Review*, Vol. 65, Issue 3 (Sep., 1971):682-693.

Madsen, Benedicte. (1979) "Om kvatitative og kvalitative metoders vitenskaplighet." In Broch et al. *Kvalitative metoder i dansk samfundsforskning*. Nyt fra samfundsvitenskapene No. 50, 1979:65-77.

Mäki, Uskal et al. (1993) *Rationality, Institutions and Economic Methodology*. London, UK: Routlege.

March, James G. and Olsen, Johan P. (1989) *Rediscovering Institutions: The Organizational Basis of Politics*. New York: The Free Press.

Marks, Gary. (1996) "An Actor-Centered Approach to Multilevel Governance." Chp 2. in Jeffrey, Charlie. *The Regional Dimension of the European Union: Towards a Third Level in Europe?* London: Frank Cass.

Marks, Gary, Liesbeth Hooghe, and Kermit Blank. (1996) "European Integration from the 1980s: State-Centric v. Multi-level Governance." *Journal of Common Market Studies* 34, no. 3: 341-378.

Marks, Gary et al. (1996) *Governance in the European Union*. London: Sage Publications.

Marks, Gary and Hooghe, Liesbeth. (2000) "Optimality and Authority: A Critique of Neoclassical Theory." *Journal of Common Market Studies*. Vol. 38, No. 5: 795-815.

Masten, Scott E. and Keith J. Crocker. (1995) "Efficient Adaptation in Long-Term Contracts: Take-or-Pay Provisions for Natural Gas." chp 12 in Williamson, Oliver E. and Masten, Scott E. *Transaction Cost Economics, Vol. II*. Hants, England: Edward Elgar Publishing Co.

Matlary, Janne Haaland. *Energy Policy in the European Union*. (1997) Basingstoke:Macmillan.

Maurer, Andreas et al. (2003) "National Systems' Adaptions" chp 4 in Kohler-Koch, Beate. *Linking EU and National Governance*. Oxford, UK: Oxford University Press.Maxwell.

McLean, Iain. (1987) *Public Choice; An Introduction*. Oxford: Basil Blackwell.

Mearsheimer, John J. (1994) "The False Promise of International Institutions" *International Security* 19:5-49.

Ministère de L'Économie des Finance et de l'Industrie. (1999) *Vers la future organization gazière française*. June 1999. Paris, France.

Moravcsik, Andrew (1993) "Preferences and Power in the European Community: a Liberal Intergovernmentalist Approach". *Journal of Common Market Studies*. Vol 31. Nr 4:473-523.

Moravcsik, Andrew (1998) *The choice for Europe : social purpose and state power from Messina to Maastricht*. Ithaca, New York: Cornell University Press.

Mueller, Dennis C. (1997) *Perspectives on Public Choice; A Handbook*. Cambridge:Cambridge University Press.

Mussler, Werner. (2002) "Energie im Wandel, Noch ein Regulierer" [www.FAZ.net](http://www.FAZ.net), 15.8.2002

- Newbury, David M. (1999) *Privatization, Restructuring, and Regulation of Network Utilities: The Walras-Pareto Lectures*. Cambridge, Massachusetts: The MIT Press.
- North, Douglas C. “Institutions and Economic Performance” chp. 10 in Mäki, Uskali et al. (1993) *Rationality, Institutions and Economic Methodology*. London:Routledge.
- North, Douglas C. (1995) “*The New Institutional Economics and Third World Development.*” In *The New Institutional Economics and Third World Development*. London: Routledge.
- North, Douglas C. (1990) *Institutions, Institutional Change and Economic Performance*. Cambridge, UK: Cambridge University Press.
- Olsen, Johan P. (1989) *Rediscovering Institutions: The Organizational Basis of Politics*. New York, NY: The Free Press.
- Pejovich, Svetozar. (1995) *Economic Analysis of Institutions and System*. Dordrecht, The Netherlands: Kluwer Academic Publishers.
- Peters, B. Guy. (1999) *Institutional Theory in Political Science: the ‘New Institutionalism’*. London, UK: Continuum.
- Poniantowski, M Ladislaw. (2002) *Senate discussions 6, M Ladislaw Poniantowski, 9 Oct 2002*. Paris, France: Sénat.
- Ragin, Charles C. (1987) *The Comparative Method*. Berkeley, CA: University of California Press.
- Révol, Henri. (2002) *Rapport d'information 305 2001-2002*. Paris, France:Sénat.
- Richter, Wolfgang and Streit, Manfred E. (1998) *Institutional Economics, Social Order and Public Policy*. Cheltenham, UK:Edward Elgar.
- Rhodes, R. A. W., Bache Ian, and George Stephen. (1996) “Policy Networks and Policy-Making in the European Union: A Critical Appraisal. chp 12 in Hooghe, Liesbeth. *Cohesion Policy and European Integration: Building Multi-Level Governance*. Oxford,UK: Oxford University Press.
- Rouvière, Andre. (1992) *Report number 499*. Paris, France:Assemblée Générale.
- Ruggie, John Gerard. (1998) “What Makes the World Hang Together.” *International Organization*. No 52: 855-885.



Rutherford, Malcolm. (1994) *Institutions in Economics: the old and the new institutionalism*. Cambridge, UK: Cambridge University Press.

Scharpf, Fritz W. (1999) *Governing in Europe: Effective and Democratic?* Oxford,UK: Oxford University Press.

Scharpf, Fritz W. (1996) "Politische Optionen in vollendeten Binnenmarkt" Chp. 3 in Jachtenfuchs, Markus et al. *Europäische Integration*. Stuttgart, Germany: Leske und Budrich.

Schmidt, Vivien A. (1992) *Democratizing France. The Political and Administrative History of Decentralization*. Cambridge,UK: University Press: Cambridge.

Schmidt, Vivien A. (1996a) *From State to Market?: the transformation of French Business and Government*. Cambridge, UK: Cambridge University Press

Schmidt, V. (1996b) "Business, the State, and the End of Dirigisme." chp 6 in Keeler, John T. et al *Chirac's Challenge: Liberalization, Europeanization, and Malaise in France*. St. Martin's Press. New York, NY

Schumpeter, Joseph. (1934) *Business Cycles. Reprinted 1964 Edition*. New York, NY: McGraw-Hill, Inc.

Schumpeter, Joseph. (1943) *Capitalism, Socialism and Democracy. 1996 Edition*. London,UK: Routledge.

Schumpeter, Joseph. (1968) *The Theory of Economic Development, eighth reprint*. Cambridge, MA: Harvard University Press.

Secretariat de d'Etat et l'Industrie 1999 "Vers la future organisation gaziere francaise. Paris, France.

Sénat, project de loi no 358, senat. Portant transposition de la directive du conseil no 90/377/cee annex 5. Paris, France.

Sénat rapport 03-075-6. Paris, France.

Smelser, Neil. (1973) "The Methodology of Comparative Analysis" in Warwick, Donald P. et al. *Comparative Research Methods*. Prentice-Hall: Englewood Cliffs, NJ.

Smith, Andy (1997) "The French Case: The Exception or the Rule?" in Jeffrey Charlie. *The Regional Dimension of the European Union: Towards a Third Level in Europe?* London: Frank Cass.

Stern, Jonathan P. (1998) *Competition and Liberalization in European Gas Markets: A Diversity of Models*. London: The Royal Institute of International Affairs.

Stern, Jonathan P. (1990) *European Gas Markets: Challenge and Opportunity in the 1990s*. Dartmouth, UK: The Royal Institute of International Affairs.

Stern, Jonathan P. (1992) *Third Party Access in European Gas Industries. Regulation-Driven or Market-Driven?* London: The Royal Institute of International Affairs

Stettler, Michael. (1999) *Institutions, Property Rights and External Effects: New Institutional Economics and the Economics of John R. Commons*. Zurich, Switzerland: Verlag der Universität Zürich.

Strange, Susan. (1998) *States and Markets. Second Edition*. London, UK: Pinter Publishers.

Tool, Marc. "A Social Value Theory in Neoinstitutional Economics" *Journal of Economic Issues*. Vol. XI No.4 December 1997.

Tsoukalis, Loukas. (1991) *The New European Economy: The Politics and Economics of Integration*. Oxford, UK: Oxford University Press.

Underhill, Geoffrey. (2000) "Conceptualizing the Changing Global Order." Introduction in Stubbs, Richard et al. *Political Economy and the Changing Global Order*. Don Mills, Ontario: Oxford University Press.

van Apeldoorn, Bastian. "The Political Economy of European Integration: Transnational Social Forces in the Making of Europe's Socio-Economic Order." chp. 18 in Stubbs et al. (2000) *Political Economy and the Changing Political Global Order*. Don Mills, ONT, Canada: Oxford University Press.

van Bergeijk, Peter A.G. (1996) *Privatization, Deregulation and the Macroeconomy: Measurement, Modelling and Policy*. Cheltenham, UK: Elgar Edward.

van Scherpenberg, Jens. (1996) "Ordnungspolitische Konflikte im Binnenmarkt." Chp 11. in Jachtenfuchs, Markus et al. *Europäische Integration*. Stuttgart: Leske und Budrich.

Veblen, Thorstein. (1923) *Absentee Ownership and Business Enterprise in Recent Times: The Case of America, 1994 Edition*. London, UK: Routledge.

Veblen, Thorstein. (1914) *The Instinct of Workmanship and the State of the Industrial Arts*. New York, NY: The Macmillan Company.

Vikers, John et al. (1989) *Privatization: An Economic Analysis*. Cambridge, MA: The MIT Press.

Vitols, Sigurt. (2000) “Globalization: A Fundamental Challenge to the German Model?” chp. 31 Stubbs et al. *Political Economy and the Changing Political Global Order*. Don Mills, ONT, Canada: Oxford University Press.

Vromen, Jack (1995) *Economic Evolution: An Enquiry into the Foundations of New Institutional Economics*. London: Routledge.

Werin, Lars. (2000) “Ronald Coase and the new microeconomics” chapter 5 in Ménard, Claude et al. *Institutions, Contracts and Organizations. Perspectives from New Institutional Economics*. Cheltenham, UK: Edward Elgar.

Williamson, Oliver E. (1984) “The Economics of Governance: Framework and Implications”. *Journal of Institutional and Theoretical Economics*. No. 140:195-223.

Williamson, Oliver E. (1985) *The Economic Institutions of Capitalism: Firms, Markets Relational Contracting*. New York, NY: The Free Press.

Williamson, Oliver E. (1996) *The Mechanisms of Governance*. Oxford, UK: Oxford University Press.

Winterhall AG. (2003) Presentation documents. 15.1.2003.

Wolf, Klaus Dieter. (1999) “Defending State Autonomy” chp 13 in Kohler-Koch et al. *The Transformation of Governance in the European Union*. London, UK: Routledge.

Yeager, Timothy J. (1999) *Institutions, Transition Economies, and Economic Development*. Boulder, CO: Westview Press.

Yin, Robert K. (1994) *Case Study Research, Design and Methods. Second Edition*. Thousand Oaks, California: Sage Publications.

Zürn, Michael. (1999) “The State in the Post-National Constellation - Societal Denationalization and Multi-Level Governance.” No. 35, October 35 Arena: University of Oslo.